

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Criminal Action
)	No. 21-10035-ADB
v.)	
)	
FAITH NEWTON,)	
)	
Defendant.)	
)	

JURY TRIAL DAY THREE

BEFORE THE HONORABLE ALLISON D. BURROUGHS
UNITED STATES DISTRICT JUDGE

June 29, 2023

John J. Moakley United States Courthouse
Courtroom No. 17
One Courthouse Way
Boston, Massachusetts 02210

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CONTENTSWITNESSPAGE

WINNIE WARURU, Resumed

Cont. Direct Examination By Mr. Brady
 Cross-Examination By Mr. Vien
 Redirect Examination By Mr. Brady

6
 57
 95

ANDREW OLOWU

Direct Examination By Mr. Brady
 Cross-Examination By Mr. Vien

99
 115

ADRIANA O'DONOGHUE

Direct Examination By Mr. Looney
 Cross-Examination By Ms. Pascucci
 Redirect Examination By Mr. Looney

120
 151
 175

AIRANISSE QUINTANA

Direct Examination By Mr. Brady

176

E X H I B I T SExhibit No.Received

542	37
543	38
444-461	42
701	53
410 to 429	113
431 to 461	
463 to 485	
489 to 497	
499 to 515	
517 to 532	
537, 539 to 548	
706 to 710	

(CONT.)

1	Exhibit No.	Page
2	536	128
	654	130
3	901	154
	902	169
4	903	171
	50.2	201
5	50.3	203

* * * * *

P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Allison D. Burroughs, United States District Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, One Courthouse Way, Courtroom 17, Boston, Massachusetts, on June 29, 2023.)

THE COURT: I know you're not going to raise anything.

MR. BRADY: It's like a ten-second housekeeping thing that I just wanted to mention if we're on the record.

So, Your Honor, just very briefly, we learned last night that one of our witnesses, our IRS summary witness, has had a serious medical emergency and she's not going to be available to testify. We shared that with the defense. So we're going to have somebody come in and, you know, be that summary witness instead. There are summary charts that go along that have been disclosed in draft form to the defense. I just wanted to advise the Court of that. That's it.

THE COURT: Okay.

Do you want to see if they're here, Karen?

COURTROOM CLERK: Yeah.

All rise for the jury.

(Jury enters the courtroom.)

COURTROOM CLERK: You can be seated.

THE COURT: Thanks everybody for being right on time.

1 I really appreciate it. We're going to get started. The
2 government can put their witness back on the stand.

3 While they're moving her up there I'm going to say,
4 we've turned this little clock around today. So I don't know
5 who's been noticing it, but it's 15 minutes off. And someone
6 pointed it out to me yesterday. And it's been that way for a
7 number of trials and every jury has mentioned it to me. And
8 it's not that we don't know about it. We just can't seem to
9 fix it. So rather than mislead, I've turned it around.

10:03 10 But that clock on the wall is accurate. So don't look
11 at this one. Look at that one. I don't know why we can't fix
12 it. It seems like we should be able to, but it's . . .

13 Is someone getting the witness?

14 MR. BRADY: Yes, Your Honor. I think she's right
15 outside.

16 THE COURT: Come on back up.

17 While you're getting settled, I'm just going to remind
18 you that you're still under oath. And you see the microphone
19 has been moved, but you can pull it right back so it's in front
10:04 20 of you. I believe that was the cleaning folks last night.

21 When you're ready.

22 MR. BRADY: Thank you, Your Honor.

23 WINNIE WARURU, Resumed

24 CONT. DIRECT EXAMINATION BY MR. BRADY:

25 Q. Good morning, Ms. Waruru.

1 A. Good morning.

2 Q. Be sure to speak right into that microphone, please.

3 Okay.

4 When we broke for the day yesterday, Ms. Waruru, you were
5 testifying about Larry Logan.

6 Do you recall that?

7 A. Yes.

8 Q. Could you please remind us who Larry Logan was?

9 A. Larry Logan was one of my patients.

10:05 10 Q. Okay. And remind us again what Faith Newton asked you to
11 give to Larry Logan.

12 A. An envelope.

13 Q. And what was in the envelope?

14 A. Money.

15 Q. Okay.

16 MR. BRADY: Could we please pull up Exhibit 675, which
17 I believe is in evidence. And go to page 61, please.

18 And the Bates number on -- the Bates number on that
19 page ends in 5121.

10:05 20 Q. And, Ms. Waruru, these were more text messages between you
21 and Faith Newton; is that right?

22 A. Yes.

23 Q. And do you see there's a message that she sent -- sent
24 here to Ms. Newton February 16, 2016, at 1717.

25 MR. BRADY: If we can highlight that.

1 Q. What did you write to Ms. Newton, then?

2 A. "I have begged with \$100 each."

3 Q. Can you please explain to the jury what that was about?

4 A. Because sometimes they -- the patient will want the money,
5 and Faith Newton didn't want them to go to the office, so
6 sometimes Faith Newton would tell me to give them the money and
7 then she will refund it to me.

8 Q. So she's saying, give the money to the patients and I'll
9 pay you back?

10:07 10 A. Yes.

11 Q. Were you always paid back?

12 A. Sometimes.

13 MR. BRADY: We can take that down. Thank you.

14 Q. Now, Ms. Waruru, I want to shift and talk a bit about
15 patient visits and nursing visits, okay?

16 A. Yes.

17 Q. Okay. Now, before home care can start for a patient, am I
18 right that there has to be an assessment done?

19 A. Yes.

10:07 20 Q. And who does that assessment, that initial assessment of
21 the patient?

22 A. The registered nurse.

23 Q. It's the registered nurse?

24 A. Yes.

25 Q. Okay. And is that assessment, is that referred to as an

1 Oasis assessment?

2 A. Yes.

3 Q. Okay.

4 MR. BRADY: Can we show just for the court and the
5 witness Exhibit 501, please.

6 Q. And can you see that Exhibit 501 is an Oasis Start of
7 Care?

8 A. Yes.

9 Q. Who is the patient, for what patient was this Start of
10:08 10 Care for?

11 A. Larry Logan.

12 Q. Okay. And can you tell the date of this assessment?

13 A. 1-23-2013.

14 MR. BRADY: Your Honor, I offer Exhibit 501.

15 MR. VIEN: Objection, foundation, Your Honor.

16 THE COURT: Can you lay a foundation, please.

17 MR. BRADY: Okay.

18 Q. So you treated Larry Logan?

19 A. Yes, I did.

10:08 20 Q. And by treating Larry Logan, did you become -- through
21 treating Larry Logan, did you become familiar with his physical
22 and medical condition?

23 A. Yes.

24 Q. Did you come familiar with his symptoms, his ailments?

25 A. Yes.

1 Q. Okay. And in this document, does this document describe
2 or have information relating to Mr. Logan's condition, his
3 medical condition, his medical needs?

4 A. Yes.

5 Q. Okay.

6 THE COURT: Is this a business record?

7 MR. BRADY: I'm sorry?

8 THE COURT: Is it a business record?

9 MR. BRADY: It's an Axxess record, Your Honor.

10:09 10 THE COURT: Okay. Come up to sidebar for just a
11 second, please.

12 **SIDEBAR:**

13 THE COURT: Has she ever seen this before?

14 MR. BRADY: She has, Your Honor. The reason why I'm
15 offering this is she didn't create this document, right? The
16 point why I'm offering this is there are statements in there
17 about this patient's condition that she knows. She can testify
18 that is not true, that is not true. It says he required this.
19 You treated him, was that true? No. It says that he did
10:15 20 help -- he needed help with this. Was that true? No.

21 And so, Your Honor, it is an Axxess record. The
22 original plan was to try to get the Axxess records in so she
23 could speak to it that way. So if there's concerns -- and I
24 understand that this is a live issue we've been talking about.

25 THE COURT: Right.

1 MR. BRADY: So we kind of can offer it subject to it
2 being tied up by the Axxess -- through the Axxess custodian who
3 could lay the foundation that this came from the database.
4 This is a business record, but that's the purpose for which I'm
5 offering it. I want to be able to show it with this witness.

6 THE COURT: Okay.

7 MR. VIEN: That's all nice, but there's no foundation
8 and it shouldn't go to the jury. It shouldn't go to the jury
9 until they establish one. I'm not sure any of the Axxess
10:15 10 records are going to come in because I'm going to object to all
11 of them.

12 THE COURT: As I tried to make clear yesterday,
13 perhaps inartfully, the Axxess database is going to be okay.
14 I'm confident that they will put on an Axxess person. So now
15 we have a dataset that's been properly authenticated. Then
16 somehow or another you have to get somebody to say this came
17 off that authenticated database, right?

18 MR. BRADY: That's the next guy, the next witness.

19 THE COURT: Then those are going to come in, as far as
10:15 20 I can tell, and you'll be able to cross-examine. Like, what
21 did you search? How do you know? You know, you can go through
22 what they pulled, how they pulled it. How you know that it's
23 accurate. You can do all of that, but I think that document is
24 going to come in. But they have not laid a proper foundation
25 now. So if you're going to object to the de bene admission,

1 you can have her testify about it without showing her the
2 document, then we move it in later.

3 MR. VIEN: I object.

4 THE COURT: You object to what?

5 MR. VIEN: To the de bene admission or the reference.
6 Let her testify without the document because it's not proper
7 for her to have the document in front of her and comment on the
8 document.

9 THE COURT: Well, she can testify about the document
10:15 10 without the document being admitted.

11 MR. VIEN: Depends on how that goes. That's a
12 question --

13 MR. BRADY: I'm sorry to interrupt, Your Honor.

14 THE COURT: Go ahead. I can't admit the document on
15 this foundation without -- over his objection. It seems to me
16 the document is going to come in, but not right now. So you
17 can talk to her about it. Does it say -- you know, does it
18 say -- what does it say about his conditions? And you can have
19 her comment on it.

10:15 20 MR. BRADY: This is what I propose to ask -- and it
21 doesn't have to be shown to the jury -- say, you know, turn to
22 page blank, do you see that it says he's at grave risk of, do
23 you see that?

24 THE COURT: Yes.

25 MR. BRADY: Based on your dealings with Mr. Logan, was

1 that true? No.

2 THE COURT: Yes, you can do that.

3 MR. BRADY: Then at the end of it, who signed this
4 document.

5 THE COURT: Yes, as far as I'm concerned, that's --

6 MR. VIEN: Slightly different objection then, or
7 another objection. We're doing the classic referring to
8 matters that aren't in evidence. And that's improper, too.

9 THE COURT: Well, I'm going to let them have that.

10:15 10 MR. VIEN: Thank you, Your Honor.

11 THE COURT: You're welcome.

12 MR. BRADY: Your Honor, excuse me. Your Honor, just
13 to maybe save us the trouble of another sidebar, I am also
14 going to show skilled nursing notes that Ms. Waruru created and
15 put into Axxess.

16 MR. VIEN: The foundation there is different, and it's
17 clear she created it and she can speak to that.

18 THE COURT: Yes, what comes out of Axxess is the same
19 thing she created, that's fine.

10:15 20 MR. VIEN: The objection is are these the nursing
21 notes you created and are they exactly the same before they
22 went into Axxess.

23 THE COURT: Well, if the substance is the same, if
24 it's what she said but in a different form, I'm going to let
25 that come in.

1 MR. BRADY: Mr. Vien can cross her on that question,
2 the reliability and weight that those documents are afforded.

3 THE COURT: You have to get your Axxess records on.
4 You have to get these documents in. This is like a crazy way
5 to try and do this. You're asking the jury to focus on
6 documents we're not letting them see. He's being a pain in the
7 butt, but that's his job, so you're going to have to accept
8 that he's going to be stringent about the rules and get your
9 documents in before you start questioning witnesses about them.

10:15 10 MR. VIEN: They don't have to come in, Your Honor.

11 THE COURT: If they don't come in, they don't come in,
12 (End of sidebar.)

13 BY MR. BRADY:

14 Q. So, Ms. Waruru, can you see what is on the screen in front
15 of you?

16 A. Yes.

17 Q. And this is an assessment for Larry Logan, right?

18 A. Yes.

19 Q. And Larry Logan was one of your patients; is that right?

10:16 20 A. Yes.

21 Q. Okay.

22 MR. BRADY: Can we go to page 5, please.

23 Q. Do you see at the bottom a section where the heading says
24 "Homebound"?

25 A. Yes.

1 Q. Okay. And it says, "Is the patient homebound?" And "yes"
2 is checked?

3 A. Yes.

4 Q. What is that -- what does that term mean, "homebound"?

5 A. It means that the patient doesn't come out from the home.

6 Q. Okay. So it says -- checked "yes" for Mr. Logan here.

7 Based on your treatment, your interactions with Mr. Logan, was
8 that true?

9 A. No.

10:16 10 Q. Okay.

11 MR. BRADY: Can we go to page 17.

12 Q. Ms. Waruru, on this page, there is assessments relating to
13 something called ADLs.

14 Do you see that?

15 A. Yes.

16 Q. And what were ADLs?

17 A. Activities of daily living.

18 Q. Now, this states that someone must help the patient put on
19 upper body clothing.

10:17 20 Do you see that?

21 A. Yes.

22 Q. Based on your knowledge of Mr. Logan, was that true?

23 A. No.

24 Q. This says that someone must help the patient put on
25 undergarments, slacks, socks or nylons, and shoes.

1 Do you see that?

2 A. Yes.

3 Q. Based on your dealings with Mr. Logan, was that true?

4 A. No.

5 Q. This says that Mr. Logan was able to bathe with
6 intermittent assistance with supervision/reminders to get in
7 and out of the shower or tub or washing difficult to reach
8 errors -- areas.

9 Do you see that?

10:18 10 A. Yes.

11 Q. Was that true?

12 A. No.

13 Q. Okay. Now, if we go to page 23, please. Ms. Waruru, who
14 signed this assessment?

15 A. This is signed by Faith Newton.

16 MR. BRADY: Can we pull up Exhibit 507 just for the
17 witness, please.

18 Q. Is this another assessment for Mr. Logan?

19 A. Yes.

10:19 20 Q. Okay. What's the date on this assessment?

21 A. 12-5-2013.

22 Q. Okay.

23 MR. BRADY: And if we could go to page 17, please.

24 Q. Do you see here on page 17 that there's assessments of
25 Mr. Logan's ADLs?

1 A. Yes.

2 Q. Those are those activities of daily living, right?

3 A. Yes.

4 Q. Okay. And here, again, it says someone must help
5 Mr. Logan to put on undergarments, slacks, socks or nylons, and
6 shoes.

7 Do you see that?

8 A. Yes.

9 Q. Was that true?

10:20 10 A. No.

11 Q. Okay. And, again, here it says that Mr. Logan was able to
12 participate in bathing self in shower/tub, but requires
13 presence of another throughout the bath for assistance and
14 supervision.

15 Do you see that?

16 A. Yes.

17 Q. Again, based on your dealings with Mr. Logan, was that
18 true?

19 A. No.

10:20 20 Q. Okay.

21 MR. BRADY: And could we go to page 22 of this
22 assessment, please.

23 Q. Do you see there's part of this, it says "orders for
24 discipline and treatment" towards the top, top half of this?

25 A. Yes.

1 Q. And is there something about how many visits were ordered
2 for Mr. Larry Logan?

3 A. Yes.

4 Q. How many visits were ordered for Mr. Logan?

5 A. Ten to fourteen visits per week. Ten to fourteen
6 visits -- I believe it's per week -- with three PRN for acute
7 condition changes for nine weeks.

8 Q. Okay. And, Ms. Waruru, who was to do those visits?

9 A. Me, Winnie Waruru.

10:21 10 Q. You, Winnie Waruru. So in other words, a nurse, a skilled
11 nurse, right?

12 A. Yes.

13 Q. And ten to fourteen visits per week, that would be up to
14 two visits a day?

15 A. Yes.

16 Q. And then it says "three PRN," right?

17 A. Yes.

18 Q. What does PRN mean there?

19 A. It means like when a patient changes the condition, you
10:21 20 can add another visit.

21 Q. So that means you could add more visits on top of the two
22 a day?

23 A. Yes.

24 Q. Okay.

25 MR. BRADY: Can we go to page 23, please.

1 Q. And my question here, Ms. Waruru, is who signed this
2 assessment?

3 A. Faith Newton, RN.

4 MR. BRADY: We can take that down. Thank you.

5 Q. Now, Ms. Waruru, how often were you scheduled to do
6 nursing visits for Larry Logan?

7 A. Two times a day.

8 Q. Two times a day every day for Larry Logan?

9 A. Yes.

10:22 10 Q. Did you do all of those visits?

11 A. No.

12 Q. What did you do instead?

13 A. I was shown -- or I was trained when I don't see the
14 patient I have a place where I can go and copy and paste the
15 previous note as long as the patient is home. So I'll go to
16 copy and paste and I'll paste the note.

17 Q. So, Ms. Waruru, even for visits that you didn't do, you
18 still copy and pasted and put in a nursing note for the visit?

19 A. Yes.

10:23 20 Q. And why did you do that?

21 A. Because that's what I was trained.

22 Q. Ms. Waruru, in addition to copying and pasting notes, did
23 you also add in other language to notes for visits that you
24 didn't do?

25 A. Yes.

1 Q. And where did you get that language?

2 A. Sometimes I'll go to Google and get some information.

3 Q. And would that be, you would Google information based on
4 the patient's symptoms or diagnoses?

5 A. Yes.

6 Q. So, Ms. Waruru, did you do a nursing note at least daily
7 for Mr. Logan?

8 A. Yes.

9 Q. And when did you stop doing that?

10:24 10 A. I stop doing the note if the patient is in the hospital.

11 Q. All right. So for Mr. Logan, did you continue to do notes
12 for visits all the way up to 2017?

13 A. Yes.

14 Q. Okay. Let me ask you about another patient. Amber
15 Gardner. Do you know who Amber Gardner is?

16 A. Yes.

17 Q. Who is Amber Gardner?

18 A. She was one of my patients that I was assigned to.

19 Q. Okay. And I believe yesterday you mentioned somebody
10:25 20 named Helen Troy?

21 A. Yes.

22 Q. Do you remember that?

23 A. Yes.

24 Q. Could you remind us who Helen Troy was -- is?

25 A. Helen Troy was the girlfriend to Larry Logan.

1 Q. Okay. And what was -- do you know if there was any
2 relationship between Helen Troy and Amber Gardner?

3 A. Helen Troy was mother to Amber Gardner.

4 Q. To Amber Gardner. Okay.

5 Now, Amber Gardner was a patient of yours?

6 A. Yes.

7 Q. And so -- and did you meet with her? Did you treat her?

8 A. Yes.

9 Q. Okay. And through that, did you become familiar with her
10:25 10 physical and medical condition?

11 A. Yes.

12 Q. Okay.

13 MR. BRADY: Could we please pull up, just for the
14 court and the witness, Exhibit 465, please.

15 Q. Ms. Waruru, can you see Exhibit 465 on the screen in front
16 of you?

17 A. Yes.

18 Q. And is this another one of those assessments?

19 A. Yes.

10:26 20 Q. And who is this assessment for?

21 A. Amber Gardner.

22 Q. Okay. And can you tell the date on this assessment?

23 A. 1-12-2014.

24 Q. All right. So that's January 12, 2014, right?

25 A. Yes.

1 Q. Okay.

2 MR. BRADY: Now, if we could go to page 4 of this
3 assessment, please. And if we could blow up at the top there
4 under "Risk Assessment," please.

5 Q. Can you see, Ms. Waruru, there's a description of
6 something called a risk assessment here?

7 A. Yes.

8 Q. Okay. And under -- there's part where it says, "Which
9 description best fits the patient's overall status?"

10:27 10 Do you see that?

11 A. Yes.

12 Q. What was checked off for that?

13 A. "The patient is likely to remain in fragile health and
14 have ongoing high risk of serious complications and death."

15 Q. Based on what you knew about Amber Gardner, was that true?

16 MR. VIEN: Objection. Just the --

17 A. No.

18 MR. VIEN: -- timing of it, Your Honor. Date of the
19 assessment, when she met, and what time she's talking about.

10:27 20 THE COURT: That's fine.

21 Can you narrow it on the timeframe, please.

22 MR. BRADY: Sure.

23 Q. Do you remember -- do you remember when you started seeing
24 Amber Gardner?

25 A. I don't remember when I started seeing her.

1 Q. Okay. Let me ask you this. During any time that you were
2 seeing Ms. Gardner, was that statement true?

3 A. No.

4 MR. BRADY: And now, can we go to page 18, please.

5 Q. Down at the bottom there's a section, this section that
6 refers to oral medications.

7 Do you see that?

8 A. Yes.

9 Q. And what did this say, what was checked in relation to
10:28 10 medication?

11 A. "Unable to take medication unless administered by another
12 person."

13 Q. Based on what you knew about Ms. Gardner, was that true?

14 MR. VIEN: Objection --

15 A. No.

16 MR. VIEN: -- again to the undetermined time period,
17 Your Honor.

18 THE COURT: Well, go back and rephrase the question,
19 please, Mr. Brady.

10:29 20 MR. BRADY: Okay.

21 Q. While you were treating Ms. Gardner during that period of
22 time --

23 A. Yes.

24 Q. -- was that statement true?

25 A. No.

1 MR. VIEN: Objection. The answer was: I can't
2 remember when I was treating Ms. Gardner.

3 THE COURT: Well, he can ask if at any time while she
4 was treating Ms. Gardner that statement was true.

5 MR. BRADY: I think I asked that. I can put that
6 question to the witness, Your Honor.

7 THE COURT: You asked it the last go-round, but I
8 don't think you've asked it here.

9 MR. BRADY: Okay.

10:29 10 Q. So, Ms. Waruru, at any time while you were treating Amber
11 Gardner, as a nurse, was that statement about her need for
12 medication, was that true?

13 A. No.

14 Q. Okay.

15 MR. BRADY: And could we go to -- could we back out of
16 that and go to page 21, please.

17 Q. Ms. Waruru, who signed this assessment?

18 A. Faith Newton, RN.

19 MR. BRADY: We can take that down. Thank you.

10:30 20 Q. Ms. Waruru, did you ever talk with Faith Newton about
21 Amber Gardner's care?

22 A. Yes.

23 Q. Why did you do that?

24 A. Because I didn't see any need of seeing this patient. She
25 could do everything for herself. And when I talked to her, she

1 told me that RN is the one who do the assessment. They're the
2 one who knows when the patient need to be seen. So I just do
3 what is on the schedule.

4 Q. And, Ms. Waruru, you mentioned that Ms. Faith Newton told
5 you that the RN is the one to do the assessment?

6 A. Yes.

7 Q. And for Amber Gardner, who was the RN?

8 A. Faith Newton.

9 Q. Okay. Now, as for the timeframe for Ms. Gardner, do I
10:31 10 have it right that from January 13, 2014, through November 24,
11 2014, you put in notes for visits to Ms. Gardner?

12 A. Yes.

13 Q. Okay. In fact, you put in notes for visits twice a day,
14 right?

15 A. Yes.

16 Q. Did you do all of those visits?

17 A. No.

18 Q. Okay. Ms. Waruru, you should have in front of you a
19 binder, a binder of documents.

10:32 20 Do you see that?

21 A. Yes.

22 Q. And I'd ask you to -- one of the tabs in there should say
23 466. If you want to open that up.

24 Do you see Exhibit 466?

25 A. Yes.

1 Q. And what is Exhibit 466?

2 A. Skilled nurse visit.

3 Q. So is that a nursing note?

4 A. Yes.

5 Q. Okay. And can you tell who the patient was for this?

6 A. Amber Gardner.

7 Q. And does it indicate on there what the date of the visit
8 was?

9 A. Yes.

10:33 10 Q. What was the date of this visit?

11 A. January 13, 2014.

12 Q. Okay. Who created this nursing note?

13 A. Me, Winnie Waruru.

14 Q. Okay. And how do you know that?

15 A. I see my name, that I signed it.

16 Q. Okay. And how -- at Arbor, how were the nursing notes
17 kept? Where were the nursing notes entered and where were they
18 kept?

19 A. We had a program called Axxess, that you go and fill the
10:33 20 nursing note.

21 Q. Okay. So I'd ask you, Ms. Waruru, if you can flip with me
22 to Exhibit 467 in your book. Is that another nursing note you
23 did for Amber Gardner?

24 A. Yes.

25 Q. And that one is from January 14, 2014?

1 A. Yes.

2 Q. Okay. Can you flip to page 468.

3 And is Exhibit 468 another nursing note you did for Amber
4 Gardner?

5 A. Yes.

6 Q. Okay. And maybe to save time here, if we were to keep
7 flipping, for these exhibits, from 468 up to 482, are all of
8 those exhibits nursing notes that you did and put into Axxess
9 for Amber Gardner?

10:35 10 A. Yes.

11 MR. BRADY: At this time, Your Honor, I offer Exhibits
12 466 through 482.

13 MR. VIEN: No objection to these.

14 THE COURT: They're admitted.

15 (Exhibits 466-482 admitted into evidence.)

16 MR. BRADY: Okay. Ms. Apfel, could we pull up on the
17 screen Exhibit 466 for us, please. Thank you.

18 Q. Can you see Exhibit 466 on your screen? It's also in the
19 book.

10:35 20 A. Yes.

21 Q. Now that we can all see it together, remind us again, what
22 is this, what is this exhibit?

23 A. It's a nursing note.

24 Q. Okay.

25 MR. BRADY: And if we could blow up the top part.

1 Q. All right. Do you see where it says the patient name on
2 there?

3 A. Yes.

4 Q. Okay. That's Amber Gardner. And then right below that it
5 gives the date of the visit, right?

6 A. Yes.

7 Q. Okay. And then along the top, there's a couple of boxes.
8 The first one says "vital signs."

9 Do you see that?

10:36 10 A. Yes.

11 Q. Can you explain to the jury what that's showing, or what
12 it's supposed to show?

13 A. This shows when you go to patient's house, you take, like,
14 the temperature, the pulse, the blood pressure, the oxygen.
15 This is where we document them.

16 Q. Okay.

17 MR. BRADY: And, Ms. Apfel, if we could zoom out of
18 that. Great. If we could scroll down to page 2. And then
19 let's keep scrolling. I'm sorry. I think we have a different
10:37 20 document up. 466, please. Okay.

21 All right. So now we're looking at this nursing note.
22 Can we blow up the bottom part where it says the "Narrative and
23 Teaching."

24 Q. Do you see that, Ms. Waruru?

25 A. Yes.

1 Q. What does that part of the nursing note show?

2 A. This shows on how you got the patient, that's where you
3 document.

4 Q. Okay. And did you write what's in this narrative?

5 A. Yes.

6 Q. Okay. Could I ask you, can you walk us through, kind of
7 read through what you put in for this narrative?

8 A. "SN assessed for patient. Patient is" -- "oriented times
9 two. Vital signs are within the normal limit. Patient with
10:38 10 flat affect, withdrawn, negative thoughts about self, has poor
11 insight and poor judgment into disease process and medication
12 due to lack" -- "of medication and disease. Noncompliant with
13 meds, ineffective coping, disturbed thought process, improper
14 nutrition. Reviewed all."

15 MR. BRADY: Okay. Let's zoom out of that, please,
16 Ms. Apfel. Then if we can scroll down on the next page. If we
17 can blow up that narrative.

18 Q. I don't think we need to read through it, but does the
19 narrative continue on to the next page?

10:39 20 Do you see that, Ms. Waruru?

21 A. Yes.

22 Q. Okay. And I do want to ask you about, in the second line
23 about halfway through it says, "SN instructed patient on
24 positive self-talk, socializing with supportive friends, taking
25 a walk and exercising. Patient encouraged on benefits on daily

1 exercise and weight control and choosing proper and healthy
2 nutrition."

3 And it goes on from there. Do you see that?

4 A. Yes.

5 Q. And what's that part of the narrative? What was that
6 about?

7 A. It's the teaching that you're supposed to teach the
8 patient.

9 Q. Okay.

10:39 10 MR. BRADY: Let's back out of that. And, Ms. Apfel
11 can we bring up Exhibit 467.

12 Q. For this visit --

13 MR. BRADY: Could you blow up the top, please.

14 Q. Who was the patient for this visit?

15 A. Amber Gardner.

16 Q. And what was the date of this visit?

17 A. January 14.

18 Q. Okay.

19 MR. BRADY: And if we zoom out of that and we go down
10:40 20 to page 2, page 2 and 3, if we can blow that up.

21 Q. Do you see the narrative there?

22 A. Yes.

23 Q. Okay. How does that narrative compare to the one in the
24 last note?

25 A. It is the same teachings.

1 Q. Okay.

2 MR. BRADY: Now, if we could back out of that and if
3 we could show Exhibit 468, please.

4 Q. Who was the patient for this visit?

5 A. Amber Gardner.

6 Q. And what was the date of this one?

7 A. January 14, 2014.

8 Q. Okay.

9 MR. BRADY: If we could kind of zoom out of that and
10:41 10 go down to page 2 and blow up the narrative, please.

11 Q. Do you see the narrative for this visit, Ms. Waruru?

12 A. Yes.

13 Q. How does that compare to the narrative in the prior notes?

14 A. It's the same narrative.

15 Q. Okay. And, Ms. Waruru, if we were to keep going through
16 these exhibits of these notes, would we continue to see the
17 same thing?

18 A. Yes.

19 Q. So are these examples of the copy and pasted notes that
10:41 20 you described?

21 A. Yes.

22 Q. And who told you to do the notes that way?

23 A. I was trained by Faith Newton.

24 Q. Okay.

25 MR. BRADY: Ms. Apfel, we can take that one down,

1 please.

2 Q. I want to ask you about somebody else. Oscar Ortiz. Who
3 is Oscar Ortiz?

4 A. He was also one of my patients.

5 Q. Okay. What was the connection between Oscar Ortiz and
6 Amber Gardner, who we just talked about?

7 A. He was boyfriend to Amber Gardner.

8 Q. Okay. Do you remember saying anything to Faith Newton
9 about Oscar Ortiz?

10:42 10 A. Yes.

11 Q. Tell the jury what you said to Faith Newton about Oscar
12 Ortiz.

13 A. I also talked about Ortiz, together with Amber Gardner,
14 because I didn't see any need of the patient to be seen. They
15 were young people. They can take their own medication. But I
16 was told that I'm not the RN. My work is just to check the
17 schedule and do the notes for the patient.

18 MR. BRADY: Could we pull up, just for the court and
19 witness, Exhibit 520, please.

10:43 20 Q. Now, can you see Exhibit 520, Ms. Waruru?

21 A. Yes.

22 Q. And is this another one of those assessments for a
23 patient?

24 A. Yes.

25 Q. Who was this assessment for?

1 A. Oscar Ortiz.

2 Q. And what was the date on this assessment?

3 A. January 12, 2014.

4 Q. Okay. Now, January 12, 2014, is that the same date you
5 mentioned before for the assessment of Amber Gardner?

6 A. Yes.

7 MR. BRADY: Okay. And if we could go to page 4,
8 please, Ms. Apfel.

9 Q. There's also a "risk assessment" section for this in this
10:44 10 assessment, Ms. Waruru.

11 Do you see that?

12 A. Yes.

13 Q. Okay. And under, "What description best fits the
14 patient's overall status," what was checked off for Oscar
15 Ortiz?

16 A. "The patient is likely to remain in fragile health and
17 have ongoing high risk of serious complications and death."

18 Q. While you were the nurse for Oscar Ortiz, was that true?

19 A. No.

10:44 20 MR. BRADY: Could we back out of that and go to page
21 19 of this exhibit, please. In the middle of the page, if we
22 could blow it up.

23 Q. There's a question about Mr. Ortiz's ability to take oral
24 medications. Do you see that?

25 A. Yes.

1 Q. What was checked off in response to that?

2 A. "Unable to take medication unless administered by another
3 person."

4 Q. And, Ms. Waruru, while you were treating Oscar Ortiz, was
5 that true?

6 A. No.

7 Q. Okay.

8 MR. BRADY: So let's back out of that. If we could go
9 to page 21, please.

10:45 10 Q. Do you see that there's -- do you see that there's an
11 order for a number of visits by a nurse for Mr. Ortiz?

12 A. Yes.

13 Q. How many visits were ordered for Mr. Ortiz?

14 A. Ten to fourteen visit per week with three PRN, condition
15 acute changes for nine weeks.

16 Q. Okay. And that's twice a day?

17 A. Yes.

18 Q. Same as Amber Gardner?

19 A. Yes.

10:46 20 Q. Okay.

21 MR. BRADY: And if we could zoom out of that.

22 Q. There's a narrative section at the bottom here.

23 Do you see that?

24 A. Yes.

25 Q. There is, about three lines down, refers to "medication

1 review done" and "patient reports noncompliance with
2 medications."

3 Do you see that?

4 A. Yes.

5 Q. And does this refer to Oscar Ortiz by "she"?

6 A. Yes.

7 Q. Again, based on your dealings with Mr. Ortiz, was that
8 accurate?

9 A. No.

10:47 10 Q. Why not?

11 A. Because he's not a she.

12 Q. And do you know how this narrative compares to the one
13 that was in the assessment we looked at for Amber Gardner
14 before?

15 A. It's a copy and paste.

16 MR. BRADY: So if we could back out of that, please.
17 Can we go to the -- go to page 22 of this one.

18 Q. Ms. Waruru, who signed this assessment for Oscar Ortiz?

19 A. Faith Newton, RN.

10:47 20 Q. Okay. And how often -- Ms. Waruru, how often were you
21 scheduled to do visits for Oscar Ortiz?

22 A. Twice a day.

23 Q. Did you do all of those visits?

24 A. No.

25 Q. How often did you go to see Mr. Ortiz?

1 A. Sometimes once or twice a week, I will put his medication
2 in the med planner for a week.

3 Q. Okay. Did you still put in nursing notes for each of
4 those twice-a-day visits?

5 A. Yes.

6 Q. Were those notes true or false?

7 A. False.

8 Q. Okay. Let me ask you about another patient. Jane
9 Flanagan. Who is Jane Flanagan?

10:48 10 A. She was one of my patients.

11 Q. Was that a patient who you got from Faith Newton?

12 A. Yes.

13 Q. Did you also put in nursing notes for Jane Flanagan twice
14 a day?

15 A. Yes.

16 Q. Did you do all of those visits?

17 A. No.

18 Q. Did you submit copy and pasted notes for visits you did
19 not actually do?

10:48 20 A. Yes.

21 Q. Okay.

22 MR. BRADY: Can we pull up Exhibit 542, please.

23 COURTROOM CLERK: Just for the witness?

24 MR. BRADY: Just for the witness, yes, sorry.

25 Q. Ms. Waruru, what is Exhibit 542?

1 A. It's a nursing note.

2 Q. For which patient?

3 A. Jane Flanagan.

4 Q. And what was the date for that visit?

5 A. April 3, 2014.

6 Q. And who created this note?

7 MR. BRADY: Zoom out, please.

8 A. Winnie Waruru, my name.

9 Q. Okay.

10:49 10 MR. BRADY: Your Honor, I offer Exhibit 542.

11 MR. VIEN: No objection, Your Honor.

12 THE COURT: It's admitted.

13 (Exhibit 542 admitted into evidence.)

14 MR. BRADY: Okay. Can we go to page 2 of this
15 exhibit, and if we could blow up the narrative, please.

16 Q. Can you see the narrative there, Ms. Waruru?

17 A. Yes.

18 Q. Is this the narrative that you entered for this visit?

19 A. Yes.

10:50 20 Q. And do you see the part three lines down where it begins,
21 "Patient educated on S/SX of depressions"?

22 A. Yes.

23 Q. What does that mean, "S/SX"?

24 A. Signs and symptoms of depression.

25 Q. And then you went on to write, "The actions to take when

1 verbalizing her needs, ineffective coping, relaxation skills."

2 And it goes on from there. Do you see that?

3 A. Yes.

4 Q. And that's what you put into your nursing note for this
5 visit, right?

6 A. Yes.

7 MR. BRADY: Okay. Could we pull up, just for the
8 witness, Exhibit 543, please.

9 Q. And is Exhibit 543 another nursing note for Jane Flanagan?

10:51 10 A. Yes.

11 Q. And that's from a visit on April 4, 2014; is that right?

12 A. Yes.

13 Q. Okay. And you created this note?

14 A. Yes.

15 MR. BRADY: I offer Exhibit 543.

16 MR. VIEN: No objection.

17 THE COURT: It's admitted.

18 (Exhibit 543 admitted into evidence.)

19 MR. BRADY: Okay. If we could go to page 2 of this
10:52 20 exhibit, please. And if we could blow up the narrative.

21 Q. Do you see the narrative for this visit?

22 A. Yes.

23 Q. And who wrote this narrative, Ms. Waruru?

24 A. Me, Winnie Waruru.

25 Q. Okay. Now, does this narrative compare to the one we just

1 saw?

2 A. It's the same note.

3 Q. And if we were to continue to look through other nursing
4 notes for this patient, what would we expect to see in the
5 narratives?

6 A. The same person --

7 MR. VIEN: Objection as to form --

8 THE COURT: Yes, sustained.

9 MR. BRADY: Okay. Let me rephrase that.

10:52 10 Q. Did you repeat this same narrative in other nursing notes
11 for this patient?

12 A. Yes.

13 Q. Let me ask you about John Enwright. Who is John Enwright?

14 A. He was one of my patients.

15 Q. Okay.

16 MR. BRADY: Can we pull up, just for the witness,
17 please, Exhibit 432.

18 Q. Ms. Waruru, is Exhibit 432 another -- another one of the
19 assessments?

10:53 20 A. Yes.

21 Q. Okay. And can you tell the date this assessment was done?

22 A. 11-18-2014.

23 Q. Okay. And the patient for this assessment was who?

24 A. John Enwright.

25 MR. BRADY: And, Ms. Apfel, if we could go to page 16

1 of the assessment, please.

2 Q. Do you see there's also an assessment of the activities of
3 daily living, ADLs, here? Do you see that?

4 A. Yes.

5 Q. Okay. And one of the things that's checked off here is
6 that Mr. Enwright needed help with grooming and using the
7 toilet.

8 Do you see that?

9 A. Yes.

10:54 10 Q. Based on your dealings with Mr. Enwright, was that true?

11 A. No.

12 MR. BRADY: And if we go to page 21 of this document,
13 please.

14 Q. How many visits were ordered for Mr. Enwright?

15 A. Five to seven visits per week with three PRNs.

16 Q. And was there also an order for Mr. Enwright to get HHA or
17 home health aide services?

18 A. Yes.

19 Q. What was that order?

10:55 20 A. Six to eight hours per day.

21 MR. BRADY: If we go to page 22.

22 Q. Ms. Waruru, who signed this assessment for Mr. Enwright?

23 A. Faith Newton, RN.

24 Q. Okay. Now, Ms. Waruru, I'm going to ask you in the
25 notebook, the binder in front of you, if you could look at

1 Tab 444. Can you see -- take your time to get there.

2 A. Yes.

3 Q. Can you see Tab 444?

4 A. Yes.

5 Q. And what is -- what's the document at Tab 44 that's
6 Exhibit 444?

7 A. It's a skilled nursing visit note.

8 Q. And who was the patient for that visit?

9 A. John Enwright.

10:56 10 Q. And what was the date of that visit?

11 A. January.

12 Q. January --

13 A. 1-1-2015.

14 Q. I'm sorry. I interrupted you. Okay.

15 And is that a nursing note you created?

16 A. Yes.

17 Q. Okay. And if you flip ahead to Exhibit 445.

18 Do you see that?

19 A. Yes.

10:57 20 Q. And 446.

21 A. Yes.

22 Q. If you flip all the way to Exhibit 461.

23 A. Yes.

24 Q. Ms. Waruru, are those all nursing notes that you created
25 for John Enwright?

1 A. Yes.

2 Q. Okay.

3 MR. BRADY: Your Honor, I offer Exhibits 444 through
4 461.

5 MR. VIEN: No objection.

6 THE COURT: 444 to 461, they're admitted.

7 (Exhibits 444-461 admitted into evidence.)

8 MR. BRADY: Can we pull up Exhibit 444, please. Thank
9 you.

10:58 10 Q. Now that we can all see it, Ms. Waruru, who was the
11 patient for this nursing visit?

12 A. John Enwright.

13 Q. Okay. And what was the date?

14 A. 1-1-2015.

15 MR. BRADY: Okay. And if we go to page 3 of this
16 note, can we blow up the narrative and training -- narrative
17 and teaching, please.

18 Q. Do you see where it's a section for "Narrative and
19 Teaching," Ms. Waruru?

10:59 20 A. Yes.

21 Q. Okay. And is that a narrative that you wrote into this
22 patient note?

23 A. Yes.

24 Q. Okay. I want to ask you about part of this note, and it's
25 about five -- it's five lines down. It says, "SN flush the

1 expired medication in the toilet. SN called doc's office and
2 asked for new prescriptions."

3 And then it goes on from there. Do you see that?

4 A. Yes.

5 Q. Okay. Then the last line of this narrative, it says, "SN
6 instructed patient on proper diet, to take more fiber and more
7 intake of fluids to prevent constipation."

8 Do you see that?

9 A. Yes.

11:00 10 Q. And that's what you put into this nursing note, right?

11 A. Yes.

12 Q. Okay.

13 MR. BRADY: Ms. Apfel, could you take that one down.

14 Could you pull up Exhibit 445, please.

15 Q. Now, this is another nursing note you did for John
16 Enwright; is that right?

17 A. Yes.

18 Q. And what was the date on this one?

19 A. 1-2-2015.

11:00 20 Q. So the next day, right?

21 A. Yes.

22 MR. BRADY: Let's go to page 3 of this note, please,
23 and can we blow up the narrative.

24 Q. Ms. Waruru, how does this narrative compare to the one we
25 just saw from the day before?

1 A. It's the copy and paste from the previous note.

2 Q. Okay. And so the copy and paste includes that line about
3 flushing the expired medication in the toilet and calling the
4 doctor's office to ask for new prescriptions?

5 A. Yes.

6 Q. Did you, in fact, do that every day for Mr. Enwright?

7 A. Not every day.

8 Q. Okay. And then that line at the bottom about instructing
9 him on a proper diet and taking more fiber, that's also

11:01 10 included here as well?

11 A. Yes.

12 Q. Okay. And you flipped through the notes -- you flipped
13 through the notes for the visits that follow after this date,
14 right?

15 A. Yes.

16 Q. And did you see that -- that same narrative repeated over
17 and over?

18 A. Yes.

19 Q. Now, did you actually do all of those visits?

11:02 20 A. No.

21 Q. How many times -- how many times in a week do you remember
22 visiting Mr. Enwright, actually?

23 A. Two to three days.

24 Q. Two to three days. But you still put in a nursing note
25 for every day, right?

1 A. Yes.

2 Q. Okay. Let me ask you about one more patient. Who was
3 Ernest Cate?

4 A. He was one of the patients I had.

5 Q. One of the patients you had, okay.

6 MR. BRADY: Can we pull up, please, just for the
7 witness, Exhibit 423.

8 Q. And is this -- this is another one of those assessments,
9 right?

11:02 10 A. Yes.

11 Q. And who is this one for?

12 A. Ernest Cate.

13 Q. And what was the date on this assessment?

14 A. 11-18-2013.

15 MR. BRADY: Okay. And let me -- let me ask,
16 Ms. Apfel, can we go to page 15, please.

17 Q. How many visits, how many nursing visits were ordered for
18 Ernest Cate?

19 A. Ten to fourteen visits per week with three PRN.

11:03 20 MR. BRADY: And let's go to the next page, Ms. Apfel,
21 please.

22 Q. Who signed this assessment?

23 A. Faith Newton, RN.

24 Q. All right. So, Ms. Waruru, how many times did you
25 actually visit Mr. Cate each week?

1 A. Like three to four days.

2 Q. Three to four days. And what did you do during those
3 visits when you would go to see him?

4 A. I do the assessment and I put medication in the med
5 planner.

6 Q. Now, how often did you put in nursing notes for Mr. Cate?

7 A. Twice a day.

8 Q. And so those notes for visits that you didn't actually do,
9 were those true or false?

11:04 10 A. False.

11 MR. BRADY: Now, we can take that down, Ms. Apfel.
12 Thank you.

13 Q. We've gone through a couple of examples of nursing notes
14 for a couple of patients, right?

15 A. Yes.

16 Q. And you've testified that there were notes for patients
17 you didn't see. The examples we saw, right?

18 A. Yes, yes.

19 Q. Were there other patients for whom you did notes for
11:04 20 visits that didn't actually happen?

21 A. Yes.

22 Q. Now, Ms. Waruru, before you were charged in this case,
23 before you were charged, you were interviewed by the
24 government; is that right?

25 A. Yes.

1 Q. You were interviewed on two separate occasions by
2 government agents?

3 A. Yes.

4 Q. And one of the things that the agents asked you was
5 whether you did all of your visits.

6 A. Yes.

7 Q. Do you remember that?

8 A. Yes.

9 Q. What did you tell them?

11:05 10 A. I said yes.

11 Q. Was that true?

12 A. No.

13 Q. Why did you tell them that?

14 A. I was scared.

15 Q. What were you scared of?

16 A. I was scared I will lose my job, and I was scared for
17 Faith Newton. I was scared to be embarrassed by her.

18 Q. Okay. Now, do you remember that the agents also asked you
19 if you had heard -- ever heard complaints from patients?

11:06 20 A. Yes.

21 Q. And what did you tell them?

22 A. I said no.

23 Q. Was that true?

24 A. No.

25 Q. And were you also asked if you knew about billing for

1 visits that never happened? Do you remember being asked about
2 that?

3 A. Yes.

4 Q. And what did you tell the agents then?

5 A. I said no.

6 Q. And was that true?

7 A. No.

8 Q. And do you remember telling the agents that you didn't
9 think there was -- you didn't believe there was anything

11:06 10 improper about Arbor's business practices?

11 A. Yes.

12 Q. Was that true?

13 A. No.

14 Q. And you testified that you spoke with the agents twice,
15 right?

16 A. Yes.

17 Q. And n the second time you spoke with them, did you tell
18 them the whole truth then?

19 A. Yes.

11:07 20 Q. The second time when they asked you, before you got
21 charged, did you tell them the whole truth then?

22 A. No.

23 Q. Because they asked you again if you did all your visits,
24 right?

25 A. Yes.

1 Q. And did you tell them the truth?

2 A. No.

3 Q. Do you remember telling him that sometimes you forgot to
4 change the notes on the computer; that was the -- the issue?

5 A. Yes.

6 Q. And was that true or false?

7 A. False.

8 Q. And in your testimony yesterday, you testified about
9 pleading guilty to crimes?

11:07 10 A. Yes.

11 Q. And one of the crimes was making false statements?

12 A. Yes.

13 Q. Was that because of the false statements you just
14 testified about?

15 A. Yes.

16 Q. Now, Ms. Waruru, do you know if other nurses at Arbor also
17 cut and pasted notes for their nursing visits?

18 A. Yes.

19 Q. How do you know that?

11:08 20 A. I had one of the nurses, we are sharing one of the

21 patients, and when I'm doing the note I could see maybe I

22 copied from her or she copied from me. It was the same note.

23 Q. So for one of your patients, you shared that patient with
24 another nurse at Arbor?

25 A. Yes.

1 Q. Okay. Who was that other nurse?

2 A. Her name was Kiboi, Gladys.

3 Q. Gladys Kiboi?

4 A. Yes.

5 Q. Was that K-i-b-o-i?

6 A. Yes.

7 Q. Okay. Do you know how Ms. Kiboi is connected to
8 Ms. Newton?

9 A. We are friends, and we came from one church.

11:09 10 Q. I'll ask you about Santiago Velasquez. Mr. Velasquez.

11 A. Yes.

12 Q. Do you know somebody by that name?

13 A. Yes.

14 Q. Tell the jury who Mr. Velasquez was.

15 A. He was one of my patients.

16 Q. And did Mr. Velasquez have health issues?

17 A. Yes.

18 Q. What do you remember were some of his health issues?

19 A. He had depression, he had bipolar, he was schizophrenic.

11:09 20 Q. And he was one of your patients as a nurse?

21 A. Yes.

22 Q. So what role did you play in Mr. Velasquez's care?

23 A. I was doing medication administration.

24 Q. Now, was there also a home health aide or HHA who was
25 assigned to Mr. Velasquez?

1 A. Yes.

2 Q. Who was that HHA?

3 A. Lucy Muthoni.

4 Q. Lucy Mooey -- Muthoni?

5 A. Muthoni.

6 Q. And who is Lucy?

7 A. Sister to Faith Newton.

8 Q. And do you know if that HHA was doing all of the visits
9 she was scheduled to do?

11:10 10 A. No.

11 Q. How do you know that?

12 A. Because the patient will complain to me, and sometimes I
13 will go to the house and the patient has gone to the bathroom
14 to himself and the bed is soiled, and he will complain that HHA
15 hasn't come. And, also, he had a advocator, her name was
16 Andrea, and he complain to -- to the -- I'm not sure that she
17 was advocator -- she was one of the person was taking care of
18 Velasquez.

19 Q. Okay. I want to ask you, Ms. Waruru, about the money you
11:11 20 made at Arbor, okay? How was your pay at Arbor? How was that
21 determined?

22 A. By the hours you make.

23 Q. So you got paid by the hour?

24 A. Yes.

25 Q. Now, if a -- if you did a visit for a patient and it was

1 just like a 15-minute visit, how would that count for pay?

2 A. It would count an hour.

3 Q. Can you tell the jury roughly how much you made per year
4 when you were working at Arbor?

5 A. I made over 100,000, and sometimes over 200,000.

6 Q. That was while working as a nurse at Arbor?

7 A. Yes.

8 Q. Is that more money than you made before?

9 A. Yes.

11:12 10 Q. Now, one of the crimes -- one of the crimes you pled
11 guilty to, as you testified yesterday, was making false
12 statements in connection with a MassHealth application?

13 A. Yes, yes.

14 Q. Okay. Tell the jury what happened with that.

15 A. I will start, like, when I came here, 2002. And I had
16 issues, I had problems with heart and I was told there is free
17 care, MassHealth, and all you have to do is to give two checks
18 for two weeks. And I didn't get any other knowledge. All I
19 knew was you give two checks and you get free care.

11:13 20 And that's what I did, even when I was working at Arbor, I
21 gave two checks. And I didn't report all of the money I made,
22 and I only give the two checks, and that's how I got myself in
23 trouble.

24 Q. So, Ms. Waruru, you told MassHealth, when you applied for
25 it, that you were making less money than you were actually

1 making at Arbor; is that right?

2 A. Yes.

3 Q. Okay. How did your time at Arbor come to an end?

4 A. When the agency closed in 2017.

5 Q. Did you talk to Faith Newton about that?

6 A. I don't -- I didn't talk to her direct because it was all
7 over, like, it was closed.

8 Q. Okay. Now, Ms. Waruru, yesterday in your testimony, we
9 took a look at your plea agreement with the government.

11:14 10 Do you remember that?

11 A. Yes.

12 Q. Okay. Do you also have a cooperation agreement with the
13 government?

14 A. Yes.

15 MR. BRADY: Can we show, just for the witness,
16 Exhibit 701, please.

17 Q. Can you see that on the screen, 701?

18 A. Yes.

19 Q. Do you recognize that, Ms. Waruru, as a copy of your
11:15 20 cooperation agreement with the government?

21 A. Yes.

22 MR. BRADY: Your Honor, I offer Exhibit 701.

23 MR. VIEN: No objection.

24 THE COURT: It's admitted.

25 (Exhibit 701 admitted into evidence.)

1 MR. BRADY: Now, Ms. Apfel, could we scroll to page 5
2 of this agreement. Can we blow up the top part, please.

3 Q. Ms. Waruru, whose signature do we see here on the
4 acknowledgment of the cooperation agreement?

5 A. That's my signature.

6 MR. BRADY: Okay. And let's back out of that, please.
7 And can we go back to page 1, please.

8 Q. Do you see at page 1 and then on to page 2, there's a
9 section that says "Terms of Cooperation." Do you see that?

11:16 10 A. Yes.

11 Q. And what does that say? You see it refers to "defendant"
12 here. Do you see that?

13 A. Yes.

14 Q. And in this agreement, who is defendant?

15 A. That is me.

16 Q. That's you, okay. And does this describe what you agreed
17 to do in this agreement?

18 A. Yes.

19 Q. So, Ms. Waruru, what did you agree to do in this
11:17 20 cooperation agreement?

21 A. I agreed to speak the truth and nothing but the truth.

22 MR. BRADY: And if we zoom out of that. Can we
23 scroll -- scroll down to paragraph 2 here.

24 Q. Do you see, Ms. Waruru, there's a section that says
25 "Substantial Assistance Motion."

1 A. Yes.

2 Q. And it says, "Should defendant provide substantial
3 assistance in the investigation or prosecution of another
4 person who has committed a criminal offense, the U.S. Attorney
5 agrees, at or before sentencing, the U.S. Attorney will take
6 one or more of the following steps."

7 Do you see that?

8 A. Yes.

9 Q. And it says it's at the U.S. Attorney's discretion. Do
11:18 10 you see that?

11 A. Yes.

12 Q. And what do you understand that to mean?

13 A. Can you repeat the question again, please.

14 Q. Sure.

15 So it describes here that the U.S. Attorney may file a
16 motion to the court based on substantial assistance.

17 Do you see that? Do you see what it says here in this
18 paragraph?

19 A. Yes.

11:18 20 Q. Okay. And then if you look at the next paragraph.

21 MR. BRADY: If we could blow that up.

22 Q. Do you see, Ms. Waruru, it says, "The determination
23 whether defendant has provided substantial assistance rests
24 solely in the discretion of the U.S. Attorney and is not
25 subject to appeal or review."

1 Do you see that?

2 A. Yes, yes.

3 Q. And the next sentence says, "The U.S. Attorney will make
4 this determination based on the truthfulness and value of the
5 defendant's assistance regardless of the outcome or result of
6 any proceeding or trial." Do you see that?

7 A. Yes.

8 Q. Is that consistent with your understanding of this
9 cooperation agreement?

11:19 10 A. Yes.

11 Q. And, Ms. Waruru, has the government made any promises to
12 you other than what's in this cooperation agreement and the
13 plea agreement that we looked at before?

14 A. No.

15 Q. And, Ms. Waruru, did you meet with the government before
16 your testimony here?

17 A. Yes.

18 Q. How many times did you meet with the government?

19 A. Three times.

11:20 20 Q. Did you say three times?

21 A. Yes.

22 Q. Maybe a few more times before that?

23 A. Yeah, before that, I meet like two, two to three times.

24 Q. Okay. What is your understanding of what could happen to
25 you if you don't tell the truth today?

1 A. I will go to prison.

2 Q. And, Ms. Waruru, are you testifying -- are you hoping --
3 let me start that question over again.

4 Are you hoping for a lower sentence based on your
5 cooperation?

6 A. Yes.

7 Q. And, Ms. Waruru, who will ultimately decide what sentence
8 you get?

9 A. The judge will decide.

11:21 10 MR. BRADY: Your Honor, nothing further at this time.

11 THE COURT: Cross?

12 MR. VIEN: Yes, Your Honor.

13 CROSS-EXAMINATION BY MR. VIEN:

14 Q. Ms. Waruru, my name is George Vien. Along with Michelle
15 Pascucci, we represent the defendant, Faith Newton.

16 Do you understand that?

17 A. Yes.

18 Q. Good morning, Ms. Waruru.

19 Do you remember yesterday when you were asked on direct
11:22 20 about your work history?

21 A. Yes.

22 Q. And you gave the list of places that you worked prior to
23 going to work at Arbor.

24 A. Yes.

25 Q. Okay. And do you remember you indicated you had been

1 interviewed, you met with the prosecutors a few times about --
2 to prepare for your trial testimony, and you've also been
3 interviewed by agents on several occasions. Is that true?

4 A. Yes.

5 Q. You've probably been interviewed by agents -- do you
6 remember how many times?

7 A. Two to three times. But I'm not exact.

8 Q. Could it have been six or seven times?

9 A. I can't remember.

11:23 10 Q. You can't remember how many times?

11 A. (Nods.)

12 Q. Do you remember telling the agents during one of those
13 interviews that at the time you worked at Arbor, you didn't
14 know it was illegal to pay patients or people who found the
15 patients and brought them to Arbor?

16 A. Yes.

17 Q. Because you didn't know it was illegal at the time you
18 worked at Arbor; is that correct?

19 A. I knew, but, like -- but in my culture, when someone do
11:23 20 good to you, sometimes you do back to them as a thanksgiving.
21 So when Faith Newton told me this patient helped her to open
22 the agency, I took it like it's a not a bad thing, though I
23 knew it's a bad thing, but she told me that's how the agency
24 works.

25 Q. So the bottom line, though, is at the time you worked at

1 Arbor, you didn't think it was illegal to give patients or
2 finders gifts or money; is that true?

3 MR. BRADY: Objection, Your Honor.

4 THE COURT: Basis?

5 MR. BRADY: I think she just answered that same
6 question.

7 THE COURT: Overruled.

8 Q. So do you remember the question?

9 A. Can you say it again, please.

11:24 10 Q. Sure, sure.

11 I'm just talking about the time you worked at Arbor, not
12 later on.

13 A. Okay.

14 Q. Okay? When you worked at Arbor, did you know it was
15 illegal to give patients money?

16 A. Yes.

17 Q. Do you remember telling the agents that you didn't think
18 it was illegal to give patients money?

19 A. Yes, based on my culture.

11:25 20 Q. Okay. So you're saying that you -- was that a lie, then,
21 that you told the agents?

22 A. It was a lie, but as I say, it's my culture. I thought
23 it's the right thing to do.

24 Q. But you told the agents, though, that you didn't think it
25 was illegal to give money to patients while you were working at

1 Arbor; is that correct?

2 A. Yes.

3 Q. And you told them you only found out it was illegal after
4 you left Arbor and were trained at other places you worked; is
5 that correct?

6 A. Yeah, other places that I was trained I was not trained to
7 give the money, even before I came to Arbor. But when I came
8 to Arbor, I was told that's how the agency works.

9 Q. But you told the agents that you learned it was improper
11:26 10 to give money to patients after you left Arbor and went to
11 another home health care business. That's true, correct, that
12 you said those things?

13 A. Yes.

14 Q. Was that a lie? Did you lie to the agents again on that
15 occasion?

16 A. I wouldn't say I lie because the other agencies I was
17 taught it's not good to give any money or any present to the
18 patient.

19 Q. You get the question, though. The question is you learned
11:27 20 that after you left Arbor, correct?

21 A. I had not even learned before Arbor.

22 Q. But that's not what you told the agents, correct?

23 A. Yes.

24 Q. Okay. Do you have an attorney who represents you now?

25 A. Yes.

1 Q. What is his name?

2 A. Attorney Boumil.

3 Q. Could you say that again?

4 A. Attorney Boumil.

5 Q. And is he here with you today?

6 A. No.

7 Q. And he's brought a civil suit against Faith Newton. Are
8 you involved in that case at all?

9 A. Apart from this one?

11:27 10 Q. Apart from this one.

11 A. No.

12 Q. And obviously you entered into a plea agreement where you
13 pled guilty to several charges against you; is that correct?

14 A. Yes.

15 Q. And one of them was conspiracy to commit health care
16 fraud?

17 A. Yes.

18 Q. And are you familiar with the charge in the indictment
19 against you?

11:28 20 A. Yes.

21 MR. VIEN: Your Honor, may I approach the witness?

22 THE COURT: Sure.

23 Q. Ms. Waruru, it's true that that's a copy of the indictment
24 I've placed before you; is that correct?

25 A. Yes.

1 Q. Could I ask you to turn to paragraph 13 of the indictment,
2 on page 5. Page 5, it's easier to find that way. The page
3 numbers are weird. They're at the top.

4 Did you find that?

5 A. Yes.

6 Q. Okay. Now, paragraph 13 reads, "Between in or about
7 January 2013 and January of 2017, defendants Newton and Waruru,
8 together with others known and unknown to the grand jury,
9 devised a scheme to defraud health care benefit programs."

11:29 10 Do you know what the word "devise" means?

11 A. No.

12 Q. This is the indictment you pled guilty to?

13 A. Yes. Devise, it can mean . . .

14 Q. How about conceived, came up with --

15 MR. BRADY: I'm going to object, Your Honor.

16 Q. -- invented? Are those consistent with your
17 understanding --

18 THE COURT: Hold on. What's the basis?

19 MR. BRADY: Relevance.

11:30 20 THE COURT: What?

21 MR. BRADY: Relevance.

22 THE COURT: Overruled.

23 Q. Do you understand that devise means you and Faith Newton
24 made up the scheme?

25 A. Yes.

1 Q. Okay. And on paragraph 14, if you go down a little, in
2 the second sentence it's talking about the false claims and it
3 says over \$100 million of those claims were fraudulent.

4 Did I read that correctly?

5 A. Yes.

6 Q. And were you aware that, after you pled guilty, the U.S.
7 Attorney put out a press release that said, "Lowell Nurse
8 Pleads Guilty in 100 Million Dollar Home Health Care Fraud and
9 Kickback Scheme"?

11:31 10 A. I saw it on the news.

11 Q. So you created a scheme with Faith Newton, and it led to,
12 according to the government, \$100 million in fraud; is that
13 true?

14 MR. BRADY: Objection, Your Honor.

15 THE COURT: Well, basis?

16 MR. BRADY: There's a lack of foundation, and I also
17 -- I'll start with foundation.

18 THE COURT: Well, come up to sidebar for a second.

19 **SIDEBAR:**

11:34 20 THE COURT: So that last question is not
21 objectionable. You could have objected to the ones about the
22 press release and about the news but you didn't. So now I'm
23 trying to figure out if the question -- are you objecting to
24 the fact she saw it on the news, or are you objecting to the
25 fact he asked her about devised a scheme.

1 MR. BRADY: I'm objecting to that, I'm also objecting
2 to the fact that the way he's characterizing what the
3 government says, what the government did. I also have
4 concerns, Your Honor, I understand your practice is to not send
5 the indictment back with the jury. The defense, though, is
6 sort of selectively picking out parts of the indictment that
7 they want to take and use and characterize and put in front of
8 the jury like this. So my concern, Your Honor, is if this is
9 not going to be a -- if they can't see the whole picture of the
11:34 10 indictment here the way it's being used, I have concerns about
11 the jury being misled.

12 THE COURT: I'm not averse to sending the indictment
13 back. I don't typically do it because there's always a lot of
14 stuff in there that I think needs to be redacted, but I'm happy
15 to send back a redacted version of it. But I mean, the press
16 release thing is probably objectionable. Her testifying about
17 what she saw in the news is probably objectionable. But him
18 asking her if she devised a scheme with Faith Newton for
19 whatever it is is fine, unless he's linking it to the news. I
11:34 20 wasn't sure exactly what your objection was, and I don't like a
21 speaking objection, so we're doing it up here.

22 MR. BRADY: And I didn't want to go into detail. My
23 concern is really, Your Honor -- and I appreciate he can ask
24 about, you know, what they did together, crimes committed
25 together, what she's charged with. That's fair game. It's

1 just trying to tie it to these external events.

2 THE COURT: The objection was late on those. You've
3 already elicited it. So that last question is is it based on
4 what you saw on the news.

5 MR. VIEN: That's not it was.

6 THE COURT: That's not what he said. So I'm going to
7 now assume that you're objecting to the news and press release
8 and you'll stay away from that, but the question is on what the
9 scheme is, the devised scheme.

11:34 10 MR. VIEN: Okay.

11 MR. BRADY: Thank you.

12 (End of sidebar.)

13 BY MR. VIEN:

14 Q. Ms. Waruru, so can you remember that last question? It's
15 been a bit. Do you want me to say it again?

16 A. Please say it again.

17 Q. So you and Faith Newton came up with, devised a scheme
18 that resulted in, according to the indictment, \$100 million in
19 false claims. Is that true?

11:35 20 A. Yes, that's what they say.

21 Q. I want to understand your immigration status a bit. You
22 were born in Kenya; is that correct?

23 A. Yes.

24 Q. You came to the United States?

25 A. Yes.

1 Q. You never became a United States citizen; is that correct?

2 A. No.

3 Q. This is weird because I asked it in a negative, but let me
4 ask you it in a different way. Did you ever become a United
5 States citizen?

6 A. No.

7 Q. And you currently have a visa?

8 A. It expired. I don't have a visa.

9 Q. And so currently you're in the United States illegally?

11:35 10 A. Yes.

11 Q. Okay. And you understand that the government could deport
12 you at any time?

13 A. Yes.

14 Q. And if the government were to deport you, you would go
15 back to where you were born in Kenya, correct?

16 A. Yeah.

17 Q. And is it your understanding that Kenya is struggling
18 right now?

19 A. Yes.

11:36 20 Q. There's a lot of civil unrest?

21 A. Yes.

22 Q. You don't want to go back to Kenya, do you?

23 A. It's possible.

24 Q. Do you think that pleading guilty to the multiple frauds
25 would make it more likely or less likely that the government

1 would deport you?

2 A. They will likely deport me.

3 Q. More likely?

4 A. Yes.

5 Q. Even on your plea agreement that you signed it says that
6 you could be subject to deportation. Is that true?

7 A. Yes.

8 Q. Has any government agent or lawyer directly or indirectly
9 told you that they would help you stay in the United States if
11:37 10 you cooperated?

11 A. No.

12 Q. But you do hope that they will help you stay in the United
13 States based on your cooperation, correct?

14 A. I don't know whether they will help me by deportation.

15 Q. No. But my question was, you hope they will help you stay
16 in the United States; is that correct?

17 A. Yeah, that's my prayer.

18 Q. I'm just asking you what you think. Do you think the
19 government would be more likely to help you if Faith Newton is
11:38 20 convicted in this case?

21 A. I don't know.

22 Q. Do you think the government would be happier with you if
23 Faith Newton were convicted in this case?

24 MR. BRADY: Objection, Your Honor.

25 THE COURT: Overruled.

1 A. No.

2 Q. You don't think it matters to them either way?

3 A. I don't know.

4 Q. Ms. Waruru, when you pleaded guilty, you pled guilty in
5 front of another judge; is that true?

6 A. Yes.

7 Q. And do you remember his name?

8 A. (No response.)

9 Q. Let me help you. Does "O'Toole" sound right?

11:39 10 A. Yes.

11 Q. Okay. That was the judge in front of whom you pleaded
12 guilty, correct?

13 A. Yes.

14 Q. That's not Judge Burroughs who is watching you testify and
15 presiding over this trial, correct?

16 A. Yes.

17 Q. And you pled guilty back in September of 2022; is that
18 correct?

19 A. Yes.

11:39 20 Q. And you haven't been sentenced yet; is that correct?

21 A. Yes.

22 Q. And your sentencing was postponed so you could testify in
23 this case; is that correct?

24 A. I was told my case was moved. It will go after Faith
25 Newton case.

1 Q. Right. Could you pull the microphone a little closer? Do
2 you mind?

3 So you were told your case was postponed until after this
4 trial; is that correct?

5 A. Yes.

6 Q. So you understand, of course, that the judge who will
7 sentence you won't see you testify here, correct?

8 A. Say that again.

9 Q. Judge O'Toole isn't watching you testify here today,
11:40 10 correct?

11 A. Yes.

12 Q. And is it your understanding he'll have to rely on the
13 government to tell him whether or not they think you told the
14 truth?

15 A. I don't know what they will do.

16 Q. No, but Judge O'Toole needs someone to tell him, did you
17 tell the truth or didn't you, right?

18 A. Yes.

19 Q. And that's the government, correct?

11:40 20 A. Yes.

21 MR. BRADY: Objection, Your Honor.

22 THE COURT: Basis?

23 MR. BRADY: Foundation.

24 MR. VIEN: Sorry?

25 THE COURT: Re-ask the question, if she knows.

1 MR. VIEN: If you don't mind, I'll just move on, Your
2 Honor.

3 THE COURT: Okay.

4 MR. VIEN: Could I ask Ms. Apfel to bring up the plea
5 agreement, which I think is Exhibit 700. Could we go to page 2
6 of the agreement.

7 Q. Ms. Waruru, I wanted to ask you about your plea agreement
8 which is now up on the screen. Paragraph 3, do you see that in
9 front of you?

11:41 10 A. Yes.

11 Q. And it talks about the sentencing guidelines; is that
12 correct?

13 A. Yes.

14 Q. And the sentencing guidelines are something that the
15 judges have to consider when sentencing a defendant; is that
16 correct?

17 A. Yes.

18 Q. And in your plea agreement, it says, "Defendant's offense
19 level is increased by 14 because the defendant caused a loss of
11:42 20 more than \$550,000 and less than \$1.5 million."

21 Did I read that correctly?

22 A. Yes.

23 Q. Yet in the indictment we talked about earlier, it said you
24 and Faith Newton created false claims for \$100 million; is that
25 true?

1 A. Yes.

2 Q. So in this plea agreement, the government has already
3 given you a big break, isn't that true?

4 A. Compared, yeah.

5 Q. Compared to the indictment?

6 A. Yes.

7 Q. So in the indictment, they said you caused \$100 million in
8 false claims, but in your plea agreement, they say it was less
9 than \$1.5 million, correct?

11:43 10 A. Yes, that's what they say.

11 Q. Do you understand how those two things can both possibly
12 be true?

13 A. No, I don't understand it.

14 Q. I'm sorry, I didn't hear you.

15 A. I don't understand it.

16 Q. Were you arrested in this case?

17 A. Yes.

18 Q. And did you spend any time in jail?

19 A. Yes.

11:43 20 Q. How long did you spend in jail?

21 A. One day.

22 Q. Just one day?

23 A. One night.

24 Q. Is it fair to say it was very unpleasant?

25 A. Yes.

1 Q. You also understand that people convicted of fraud can go
2 to jail for a long time; is that right?

3 A. Yes.

4 Q. And now you stand convicted of fraud, correct?

5 A. Yes.

6 MR. VIEN: Your Honor, I don't want to ask a question
7 that you may find objectionable. May I come to sidebar before
8 I ask?

9 THE COURT: Yes. I don't want you to ask a question
10 that I find objectionable either.

11 MR. VIEN: Sometimes I need your help.

12 **SIDEBAR:**

13 MR. VIEN: I'm sorry. The next question --

14 THE COURT: Keep your voice down.

15 MR. VIEN: The next question I would like to ask is
16 that you know in fact that Faith Newton has been in jail for 28
17 months charged with the same crime that you're charged with.

18 THE COURT: No, no.

19 MR. VIEN: That's why I came up.

11:46 20 THE COURT: You did right by coming up. Don't ask the
21 question. Your objection I anticipate that would have come is
22 sustained. I don't want you to ask it because the question is
23 very prejudicial.

24 MR. VIEN: I think I should get some credit for coming
25 up to --

1 THE COURT: I'll give you full credit.

2 MR. VIEN: Thank you.

3 THE COURT: Are you going to finish your cross before
4 lunch?

5 MR. VIEN: I don't know. Some chance. What time is
6 lunch, 12:00?

7 COURTROOM CLERK: It's a hot lunch.

8 MR. VIEN: Oh.

9 THE COURT: Right at 12:00 on the hot lunch days.

11:46 10 MR. VIEN: Whatever. If you want to break, we'll
11 break at 12:00 either way.

12 THE COURT: I was just curious how much you had left.

13 MR. VIEN: Yeah, depends.

14 THE COURT: Okay.

15 (End of sidebar.)

16 THE COURT: Mr. Vien is correct that his question was
17 objectionable and he's going to move on.

18 MR. VIEN: But I am not. Just the question.

19 Ms. Apfel, may we put up Exhibit 701, the cooperation
11:46 20 agreement.

21 Q. Ms. Waruru, you've already testified on direct about the
22 cooperation agreement. And is it fair to say that you're
23 hoping that you're not going to go to jail at all on this case?

24 A. For that, I don't know whether I will go or not.

25 Q. Ultimately it will be the judge who decides, Judge O'Toole

1 who decides whether or not you go to jail at all, correct?

2 A. I don't know which judge because I have a different judge
3 so I don't know whether it's --

4 Q. But Judge O'Toole is the judge in front of whom you
5 pleaded guilty, correct?

6 A. Yeah.

7 Q. Okay. And is it your understanding that the judge in
8 front of whom you pleaded guilty will be the judge who
9 sentences you?

11:47 10 A. Yes.

11 Q. Okay. And that's Judge O'Toole?

12 A. Sorry. You mean the one I had before or the judge in
13 front of me?

14 Q. The one you had before. The one you had before, Judge
15 O'Toole, he's the one you pleaded guilty in front of, right?

16 A. Yeah.

17 Q. And he's the one who will sentence you, correct?

18 A. I don't know now if he is the judge, in front him, or the
19 judge in front of me.

11:48 20 Q. I didn't understand that. I'm sorry.

21 A. I don't know now whether it's the judge in front of me who
22 do the judgment or it's the judge who I pled guilty to.

23 Q. You're just confused right now about the judges; is that
24 correct?

25 A. I know the judge listening is the judge to judge.

1 Q. Let me try to ask it very simply. Do you know who the
2 judge is who will impose your sentence?

3 A. It's the judge in front of me.

4 Q. I couldn't hear the end of that. Judge what?

5 A. The judge in front of me.

6 Q. The judge in front of you, Judge Burroughs?

7 A. Yes.

8 MR. VIEN: Okay. Your Honor, could I ask for a
9 correction in that it will be Judge O'Toole who will sentence
11:49 10 her, since it's a matter of public record?

11 MR. BRADY: We can probably stipulate to that.

12 THE COURT: I think the parties are in agreement that
13 I will not be the one that sentences her.

14 Q. Anyway, let's go to page 2 of the cooperation agreement.
15 And if you go to paragraph 2, could we blow up the second
16 paragraph under number 2. Thank you.

17 Now, you understand that this paragraph of the cooperation
18 agreement means it is entirely up to the government whether or
19 not they file a motion and ask Judge O'Toole to give you a
11:50 20 lower sentence than he otherwise would. Do you understand
21 that?

22 A. Yes.

23 Q. And whatever the government decides, you've given up your
24 right to appeal or challenge that decision; is that right?

25 A. Yes.

1 Q. Now, approximately when did you become a licensed
2 practical nurse?

3 A. 2009.

4 Q. And when did you go to work at Arbor?

5 A. 2014.

6 Q. So you had about five years of experience as a licensed
7 practical nurse before you went to Arbor?

8 A. Yes.

9 Q. Okay. And when you got to Arbor, approximately how many
11:50 10 people were working in the office?

11 A. I would say more than ten, but I'm not -- approximately.

12 Q. I'm sorry, I couldn't hear you.

13 A. I would say like more than ten, but I'm not sure.

14 Q. Those are just the office workers, correct?

15 A. Yes.

16 Q. And when you were working at Arbor, approximately how many
17 visiting nurses and home health care aide workers were there?

18 A. I'm not sure.

19 Q. Was it more than 100?

11:51 20 A. I believe so.

21 Q. And about how many patients were there at Arbor when you
22 went to work there?

23 A. I don't know how many patients that Arbor had.

24 Q. Could you estimate for us or not?

25 A. No, I'm not sure.

1 Q. Okay. When you first came to Arbor, what was the
2 condition of the filing at Arbor, the records, hard copies of
3 the records?

4 A. For the office, I don't know the filing because I didn't
5 work in the office.

6 Q. You did not work in the office?

7 A. No.

8 Q. But you've been to the office, right?

9 A. Yeah.

11:52 10 Q. And when you went to the office, you saw files all over
11 the place; is that fair to say?

12 A. Yes.

13 Q. It was a mess?

14 A. They were arranged, so I don't know, when you say "mess,"
15 I don't know what you mean.

16 Q. Well, let me just go back. You saw files all over the
17 place when you went to the office to work at Arbor; is that
18 correct?

19 A. Yeah.

11:52 20 Q. Okay. And do you know where the hard copies, paper copies
21 of the files were kept?

22 A. When you go to the offices, you see the binders. So I
23 believe that's where they put the paperwork.

24 Q. And when you were working at Arbor, was Helen Sech working
25 there?

1 A. I remember somebody by the name Helen.

2 Q. You don't remember what she did, though?

3 A. I'm not sure what she did, but I remember the name Helen
4 in the office.

5 Q. What about Joseph Muiruru?

6 A. Yes.

7 Q. You know him?

8 A. Yes.

9 Q. What was his job at Arbor?

11:53 10 A. He was in nursing department.

11 Q. And wasn't he the head of nursing?

12 A. Yes.

13 Q. Okay. So he was above you in the hierarchy at Arbor; is
14 that correct?

15 A. Yes.

16 Q. And what about Rosa Gonzales, did she work there?

17 A. Yes.

18 Q. What was her job?

11:54 19 A. She was giving the schedule. Sometimes she will be a
20 scheduler.

21 Q. And how about Airanisse Quintana, what did she do?

22 A. That one, I don't remember her.

23 Q. And who is the president of Arbor?

24 A. There were -- say that question again.

25 Q. Was there someone who had the title of president at Arbor?

1 A. Yes.

2 Q. And do you remember what his name was?

3 A. Syed.

4 Q. You mean Syed Hussain?

5 A. Yeah.

6 Q. Wasn't it another man whose last name was Kahn?

7 A. There was another one who came after Syed, but I don't
8 remember his name.

9 Q. You're not sure if that's Mr. Kahn or not?

11:55 10 A. No.

11 Q. And Syed Hussain, did he overlap with you while you were
12 working at Arbor?

13 A. Sometimes I'll call him if I need help.

14 Q. Sorry. By "overlap" I meant did you guys work at Arbor at
15 the same time?

16 A. Yes.

17 Q. Okay. And what was his job?

18 A. There was a time he was the one above the --

19 Q. The one above whom?

11:55 20 A. Like, he was overall for all the workers.

21 Q. He was the boss in the office?

22 A. Yeah.

23 Q. Okay. And what about Joseph Ouko?

24 A. Joseph was in the department, nursing department.

25 Q. And what was his job in nursing?

1 A. I'm not sure, but even him, if you need anything with
2 nursing, you can talk to him.

3 Q. If there are any problems with nursing, you can go to
4 Joseph Ouko?

5 A. Yes.

6 Q. Okay. And that was at a different time than Ben Muiruru
7 was in charge of the nurses?

8 A. I believe so.

9 Q. Okay. And do you know how long Syed Hussain and Joseph
11:56 10 Ouko stayed at Arbor?

11 A. No.

12 Q. Were they -- were they there in 2015; do you know?

13 A. I don't remember. I know they were there, but I don't
14 remember the exact year that they work there.

15 Q. Is it fair to say that both of them only worked there for
16 a few months?

17 A. Probably.

18 Q. Okay. You just don't know because you weren't in the
19 office or you can't remember?

11:57 20 A. Yeah, I can't remember. So I wasn't like in the office
21 every day, so that's why I'm not sure.

22 Q. But it's fair to say they weren't there the entire time
23 you worked at Arbor, correct?

24 A. No.

25 Q. I'm sorry, I screwed that up because of the way I asked

1 the question. Is it correct that they were not there
2 throughout the entire time you worked there?

3 A. Yes.

4 Q. Now, I wanted to ask you a couple of questions about
5 nursing notes in general.

6 A. Yes.

7 Q. Some of the nursing visits you do are repetitive; is that
8 correct?

9 A. Yes.

11:58 10 Q. You do the same thing, right?

11 A. Yes.

12 Q. And you're saying that -- on direct you said sometimes you
13 didn't actually do nursing visits, correct?

14 A. Yes.

15 Q. But did you ever do nursing visits?

16 A. Yes.

17 Q. And did you do nursing visits and provide skilled nursing
18 care to the patients?

19 A. Yes.

11:58 20 Q. And many of the patients you went to see needed the
21 skilled nursing care; is that correct?

22 A. Yes.

23 Q. And you provided it to them, correct?

24 A. Yes.

25 Q. And your notes, regardless of whether they reflected that,

1 you actually helped these people when you went and saw them,
2 correct?

3 A. Yes.

4 Q. Did Faith Newton or anyone else at Arbor tell you not to
5 do that?

6 A. To do what?

7 Q. Did they ever tell you not to go help these people?

8 A. No.

9 Q. And you did help these people, right?

11:59 10 A. I did.

11 Q. Well, you think because you're being humble. But you went
12 and you're a licensed practical nurse and you provided skilled
13 nursing care to them, correct?

14 A. When I visit them I will provide what is supposed to be
15 provided.

16 Q. Right. And can you say, what percentage of nursing notes
17 you sent in, what percentage were real and reflected actual
18 nursing visits where you helped these people versus the ones
19 that you talked about just making up?

11:59 20 A. I am not sure.

21 MR. VIEN: Your Honor, I know you want to stop at
22 exactly at 12:00 today, and I have a little bit more, so I
23 wanted to bring it to your attention.

24 THE COURT: We can recess for lunch. He's saying that
25 because I told him at sidebar that your lunch was hot today and

1 we'd be sending you up right at 12:00. So we'll recess for
2 lunch until quarter-of-one.

3 COURTROOM CLERK: All rise for the jury.

4 (Jury exits the courtroom.)

5 THE COURT: All right. Back at quarter-of-one. The
6 witness is on cross-examination, so the government shouldn't be
7 talking to her. You can talk to her, but he's entitled to
8 cross-examine on any conversations that you had during the
9 break, so probably the safer course is not talking to her.

12:01 10 Anything else before we break?

11 MR. VIEN: No.

12 MR. BRADY: Not for us, Your Honor.

13 THE COURT: Okay. See everybody at quarter-of-one.

14 Thanks.

15 (Recess, 12:01 p.m. - 12:47 p.m.)

16 THE CLERK: All rise for the jury.

17 (The jury is present for the following.)

18 THE CLERK: Court is back in session. Please be
19 seated.

12:48 20 THE COURT: When you're ready, Mr. Vien.

21 BY MR. VIEN:

22 Q. Ms. Waruru, to try to pick up where we left off, I had
23 asked you some questions about what you did as a nurse. And is
24 it true that you provided services on many occasions?

25 A. Yes.

1 Q. And you tried to help the patients?

2 A. Yes.

3 Q. And some of the other nurses and home health care aides
4 did the same; is that correct?

5 A. Yes.

6 Q. Nobody was prevented from helping the patients in doing
7 their jobs; is that correct?

8 A. No.

9 Q. I'm sorry. I keep doing that and asking you the reverse.

12:48 10 Is it true that other nurses and home health aides cared
11 for the patients and did what they were supposed to do as well?

12 A. They did.

13 Q. Did other nurses and home health aides go to their
14 patients and provide the services --

15 THE COURT: Hold on, Mr. Vien. You have got to leave
16 the phones in the jury room. Okay. Go ahead, Mr. Vien.

17 BY MR. VIEN:

18 Q. So Ms. Waruru, I think we agree that you provided care to
19 a lot of patients; is that correct?

12:49 20 A. Yes.

21 Q. You attended the visits and did what you were supposed to
22 do?

23 A. Yes.

24 Q. And did other nurses, to your knowledge, do the same?

25 A. I am not sure because everybody was assigned to their own

1 patient.

2 Q. Okay. So you weren't present, so you're saying you can't
3 say whether or not they did what they were supposed to do?

4 A. Yeah, I cannot talk on behalf of other nurses or nurse's
5 aide because we didn't, like, go to homes together. You had
6 your own patient assigned to.

7 Q. Did you ever go to homes with other nurses?

8 A. Yes.

9 Q. And when you did that, were they -- were you both
12:50 10 performing the duties you were supposed to perform?

11 A. Yeah, but with different shifts.

12 Q. Right. And who are some of the nurses that, in your
13 opinion, did a good job of providing care for the patients?

14 Did you hear the question?

15 A. Repeat the question.

16 Q. You said sometimes you saw other nurses doing the patient
17 care they were supposed to do --

18 A. Yes.

19 Q. -- correct?

12:50 20 A. Yes.

21 Q. Who are some of the other nurses that you felt provided
22 good care to the patients?

23 MR. BRADY: I object to that, Your Honor.

24 THE COURT: Basis?

25 MR. BRADY: Relevance.

1 THE COURT: I'll let him have the question. Not
2 unlimited in this area, though, Mr. Vien, please.

3 BY MR. VIEN:

4 Q. Do you understand the question?

5 A. Yes. There are different nurses.

6 Q. Which ones were good in your opinion?

7 A. I know one, Faith Ngigi.

8 Q. Just for the court reporter, do you know how to spell her
9 last name?

12:51 10 A. N-G-I-G-I.

11 Q. And she's one of the few other nurses that you actually
12 worked with out in the field, so to speak, right?

13 A. Yes. She had -- she was a supervisor of one of my
14 patients.

15 Q. And what about the home health care aides; did you ever
16 have occasion to see them provide the services they were
17 supposed to provide?

18 A. Not all the time. We did go in different times.

19 Q. I think you said not all the time, but were there times
12:52 20 when you saw home health care aides actually providing the
21 services to the patients?

22 A. Yes.

23 Q. And do you remember some of the names of those home health
24 care aides who actually provided services to the patients?

25 A. Yes.

1 Q. What are some of their names?

2 A. I worked with Lucy Muthoni, I've worked with Summer, and I
3 worked with other Spanish-speaking nurse's aides. I don't
4 remember their names.

5 Q. And they all did a good job, right?

6 A. Yes.

7 Q. And they took care of the patients?

8 A. Yes.

9 Q. And nobody at Arbor told you not to do that, right?

12:52 10 A. No.

11 Q. No, nobody told you, correct?

12 A. Nobody said you're not supposed to do the work.

13 Q. And some of the visits are kind of redundant; is that
14 correct? They're very similar, over and over again, right?

15 A. Yes.

16 Q. And in those situations when you cut and paste the nursing
17 notes, since you're doing the same thing over and over again,
18 the nursing note basically stays the same, right?

19 A. Yeah, because there are sometimes the same patient and
12:53 20 they don't change.

21 Q. And you're doing the same thing to them, right?

22 A. Yes.

23 Q. So instead of rewriting nursing notes for what you
24 actually did, you just copied and pasted when you were
25 basically doing the same thing, right?

1 A. I'll do copy and paste of the note, but the vital signs
2 sometimes are different, because the vital signs you take maybe
3 today is not be the same tomorrow, but the nurse's note --

4 Q. So in your opinion, just because you were cutting and
5 pasting a note, it didn't mean that you didn't provide the care
6 that the note reflects; is that true?

7 MR. BRADY: Objection.

8 THE COURT: Hold on. Basis?

9 MR. BRADY: He's asking in your opinion.

12:54 10 THE COURT: Well, rephrase the question, please,
11 Mr. Vien.

12 BY MR. VIEN:

13 Q. Okay. You've heard a lot about cutting and pasting notes,
14 right?

15 A. Yes.

16 Q. Okay. When you're seeing a patient that required the same
17 kind of help or skilled nursing care, you see them over and
18 over again, right?

19 A. Yes.

12:54 20 Q. Okay. You're basically going to do the same thing every
21 visit, right?

22 A. Yes.

23 Q. And so in those circumstances, you would cut and paste
24 from an earlier visit, right?

25 A. Yes.

1 Q. And -- but you actually provided the services, right?

2 A. Not all the time.

3 Q. No, but on the cases where you did provide the services,
4 the fact that a nursing note was cut and pasted didn't mean you
5 didn't work there, right?

6 A. I'll copy and paste even if I didn't see the patient.

7 Q. But you would also do it when you did see the patient?

8 A. Yes.

9 Q. Okay. And the only people that know what actually went on
10 in a patient visit are the nurse or the home health care aide
11 and the patient, right?

12 A. And the people in the office where I'll send the notes.

13 Q. But the people in the office weren't actually at the
14 patient's home with the nurse or the home health care aide,
15 correct?

16 A. No.

17 Q. So you need the home -- the only people who would know,
18 unless other people are present, would be the home health care
19 aide and the patient, correct?

12:56 20 A. Yes.

21 Q. I just wanted to ask a couple of questions about some of
22 the patients you talked about. Ernest, do you remember Ernest
23 Cate?

24 A. Yes.

25 Q. And during the time you were at Arbor, he actually had

1 surgery, right, while you were at Arbor?

2 A. Not while I was in Arbor, but if I can recall, he had done
3 surgery already.

4 Q. Before you started, he had just -- is it fair to say he
5 just had surgery when you started?

6 A. I can't recall very well but --

7 Q. And he had -- what does PCA stand for again?

8 A. Personal care assistant.

9 Q. And after surgery, he had a personal care assistant, right?

12:57 10 A. Yes.

11 Q. In addition to skilled nursing visits, right?

12 A. Yes.

13 Q. And he basically had a personal care assistant every day?

14 A. Yes.

15 Q. And so you -- and that was -- you saw that because you
16 were at his home frequently, right?

17 A. Yes.

18 Q. And you were taking care of it, right?

19 A. Yes.

12:57 20 Q. And Ernest Cate currently is homebound, right?

21 A. When I started, he was not homebound.

22 Q. Okay. But now he is, correct?

23 A. I don't know because I haven't seen him in like two to
24 three years.

25 Q. And earlier today you were talking about some of the OASIS

1 documents?

2 A. Yes.

3 Q. And you said they were signed by Faith Newton, right?

4 A. Yes.

5 Q. And they were signed electronically by Faith Newton, right?

6 A. Yes.

7 Q. So it's not her actual signature on it, correct?

8 A. You can sign electronically in the computer. That's what
9 we all used to sign.

12:58 10 Q. But the point is, once you have an electronic signature,
11 you can't look at it and say, oh, I recognize this as Faith
12 Newton's signature, because it's electronic, right?

13 MR. BRADY: Objection, Your Honor.

14 THE COURT: Basis?

15 MR. BRADY: The form of the question.

16 THE COURT: Overruled.

17 BY MR. VIEN:

18 Q. Correct?

19 A. Yes.

12:58 20 Q. John Enright, Mr. Enright is actually an alcoholic; is
21 that true?

22 A. Yes.

23 Q. And he was also legitimately prescribed Percocets, right?

24 A. Yes.

25 Q. And as a nurse, you know that combination of alcohol and

1 Percocets is very dangerous, right?

2 A. Yes.

3 Q. And so what you did is you frequently went to John
4 Enright's home because you kept the Percocets locked up, right?

5 A. I'll do the med planner. You put like the medication in
6 the med planner. So you put them in for those days that you
7 wouldn't go, and the rest you're going to lock -- we had a
8 lockbox, and I used to lock the rest in the box.

9 Q. Right. Because you didn't want him to get them when he
12:59 10 was drinking?

11 A. Yes.

12 Q. But he needed the Percocets, right?

13 A. Yes.

14 Q. And so that required you to make frequent visits to his
15 home, correct?

16 A. Yes.

17 MR. VIEN: Now, I was wondering if Ms. Apfel could
18 take a -- put up the text messages, which are here -- I have
19 here somewhere. Excuse me. Exhibit 675. And could we go to
01:00 20 USAO number -- the last five -- four numbers are 5066.

21 And could we find somewhere it says P-L-Z? Let's try
22 5095.

23 BY MR. VIEN:

24 Q. Could you blow up the text messages that says -- in the
25 middle there, it says yap, Y-A-P.

1 Now, is that -- did you write that "yap, the daughter
2 wants more hours"?

3 A. Let me read it.

4 (Witness reviews document.)

5 A. Yes.

6 Q. Is that you or Faith Newton that wrote that?

7 A. It says it's me, Winnie Waruru.

8 Q. And you say that, "Tell her we will give her more hours if
9 the doctor approves; otherwise, no more after July 4th."

01:02 10 A. Yes.

11 Q. And that means you needed a doctor's approval to increase
12 her hours; is that right?

13 A. Yes.

14 Q. Okay. And Faith Newton didn't tell you not to wait for
15 the doctor. She accepted that, right?

16 A. I cannot remember, but I can see the message.

17 Q. Well, she doesn't say don't worry about the doctor? She
18 didn't say anything like that, right?

19 A. No, I don't see it.

01:03 20 MR. VIEN: Okay. And could you go to 5100, please.

21 BY MR. VIEN:

22 Q. I don't want to waste your time on that because I can't
23 find the one I wanted to talk about.

24 So let me ask you, when you made these false statements to
25 the agents, Faith Newton wasn't with you, correct?

1 A. No.

2 Q. You did that on your own, right?

3 A. Yes.

4 Q. And when you did these patient visits or didn't do the
5 patient visits, that was up to you, right?

6 A. Say that again.

7 Q. Faith Newton wasn't with you telling you when you did
8 patient visits, right?

9 A. Yeah, but she has trained me before.

01:04 10 Q. She talked to you, but you're the one who went out to the
11 house, right?

12 A. Yes.

13 Q. And you could have done the visits had you wanted to,
14 right?

15 A. Yes.

16 Q. And Faith Newton didn't enter those patient nursing notes
17 for you, right?

18 A. No.

19 Q. You did that on your own, correct?

01:04 20 A. Yes.

21 MR. VIEN: I don't have anything else right now, Your
22 Honor.

23 THE COURT: Redirect?
24
25

1 MR. BRADY: Just briefly, Your Honor.

2 REDIRECT EXAMINATION BY MR. BRADY:

3 Q. Good afternoon, Ms. Waruru.

4 A. Good afternoon.

5 Q. I am going to ask you a few questions about the
6 cross-examination, follow up on that, okay?

7 A. Yes.

8 Q. Okay. Do you remember that Mr. Vien asked you a couple of
9 questions on cross-examination about the size of the fraud that
01:05 10 you agreed to commit with Faith Newton?

11 A. Yes.

12 Q. You remember he showed you -- showed you the indictment?

13 A. Yes.

14 Q. And he referred you to somewhere in there where it said
15 \$100 million fraud?

16 A. Yes.

17 Q. Okay. And then, do you recall he also directed you to
18 your plea agreement? Do you remember looking at that, too?

19 A. Yes.

01:05 20 Q. Okay. And he directed you to a number in there that was
21 \$1.5 million?

22 A. Yes.

23 Q. Okay. Did you and Faith Newton have different roles in
24 committing this fraud?

25 MR. VIEN: Objection to the relevancy, given the point

1 he's trying to make.

2 THE COURT: Overruled.

3 BY MR. BRADY:

4 Q. Let me ask a different question.

5 Did you and Faith Newton have different roles at Arbor
6 Homecare?

7 A. Yes.

8 Q. How were your roles different?

9 A. My role was to see the patient in the field and her role
01:06 10 was in the office.

11 Q. So you worked out in the field as a nurse, right?

12 A. Yes.

13 Q. And Ms. Newton worked back in the office at Arbor, right?

14 A. Yes.

15 Q. Did you have any ownership stake in Arbor? Did you own
16 Arbor?

17 A. No.

18 Q. Did you have the ability to hire anybody at Arbor?

19 A. No.

01:07 20 Q. Did you have the ability to fire anybody at Arbor?

21 A. No.

22 Q. Did you have anybody who you supervised at Arbor, somebody
23 who reported to you?

24 A. No.

25 Q. No, okay. Did Faith Newton have people who reported to

1 her at Arbor?

2 A. Yes.

3 Q. How many?

4 A. Almost, like, if anybody need, have any question, most of
5 the people are going to her, most of the nurses.

6 Q. So for most of the nurses at Arbor, she was the go-to
7 person, right?

8 A. Yeah.

9 Q. Because she was the boss, right?

01:07 10 A. Yes.

11 Q. What role did you have at Arbor relating to training other
12 people?

13 A. I didn't have any.

14 Q. What role did you have at Arbor relating to the home
15 health aide program?

16 A. I didn't have any.

17 Q. Okay. Did you have anything to do with creating documents
18 relating to the home health aide program?

19 A. No.

01:08 20 Q. So did you ever create like a certificate saying somebody
21 was trained to be a home health aide at Arbor? Did you ever do
22 that?

23 A. No.

24 Q. One of the numbers you were asked about on cross was \$1.5
25 million from the plea agreement. Remember that?

1 A. Yes.

2 Q. Do you know how much money Arbor made billing for your
3 nursing visits? Do you know what that amount was?

4 A. No.

5 Q. Because you got paid by the hour, right?

6 A. Yes.

7 Q. Do you know if Faith Newton was paid just by the hour?

8 A. I don't know.

9 Q. Okay. You testified about this earlier, but how much
01:09 10 money did you make?

11 MR. VIEN: Objection to the scope. That was not
12 subject to cross-examination.

13 THE COURT: Overruled.

14 BY MR. BRADY:

15 Q. How much money, Ms. Waruru, did you make from your time
16 working at Arbor?

17 A. Over \$200,000.

18 Q. Over \$200,000?

19 A. Yes.

01:09 20 Q. Do you have any idea how much money Faith Newton made from
21 Arbor?

22 A. No.

23 MR. BRADY: Nothing further, Your Honor.

24 MR. VIEN: No recross, Your Honor.

25 THE COURT: You're excused. Thank you. You're

1 excused, Ms. Waruru. You can go.

2 THE WITNESS: Thank you.

3 THE COURT: Next witness, please.

4 MR. BRADY: Your Honor, the United States calls Andrew
5 Olowu.

6 Your Honor, I believe we have binders for this
7 witness, which we may need to approach to hand up, unless
8 they're already there.

9 THE CLERK: Please raise your right hand.

01:10 10 (Witness sworn.)

11 THE WITNESS: I do.

12 THE CLERK: Thank you.

13 Can you please state your name and spell your last
14 name for the record.

15 THE WITNESS: My name is Andrew Olowu, O-L-O-W-U.

16 THE CLERK: Thank you.

17 MR. BRADY: Your Honor, may I approach the witness and
18 hand him the binder?

19 THE COURT: You may.

01:11 20 MR. BRADY: May I proceed, Your Honor?

21 THE COURT: Of course.

22 ANDREW OLOWU, duly sworn

23 DIRECT EXAMINATION BY MR. BRADY:

24 Q. Good afternoon, Mr. Olowu.

25 A. Good afternoon.

1 Q. And I know you already stated your name here, but could I
2 ask just to introduce yourself again to the jury.

3 A. My name is Andrew Olowu.

4 Q. Mr. Olowu, where do you live?

5 A. I live in Dallas, Texas.

6 Q. Welcome to Boston.

7 A. Thank you.

8 Q. Where do you work, Mr. Olowu?

9 A. I work for Axxess.

01:12 10 Q. What is Axxess?

11 A. Axxess is a health technology company. We provide
12 electronic medical record systems for care-at-home
13 organizations, like home health, hospice agencies.

14 Q. And for the benefit of the court reporter, can I ask you
15 to spell "Axxess."

16 A. Sure. It's A-X-X-E-S-S.

17 Q. Okay. Where is Axxess located?

18 A. Axxess is located in Dallas, Texas.

19 Q. Okay. How big a company is Axxess?

01:12 20 A. We have over 3,000 organizations and with over 800
21 employees.

22 Q. And how long has Axxess been around?

23 A. Axxess has been around since 2007.

24 Q. And how long have you been with Axxess?

25 A. Since the beginning, since 2008.

1 Q. And what's your job at Axxess?

2 A. I'm the chief technology officer at Axxess.

3 Q. And for how long have you been in that role at Axxess?

4 A. Since the beginning.

5 Q. And I think, Mr. Olowu, you started to describe this
6 before, but what types of companies does Axxess work with?

7 A. So we work with home health/home care hospice agencies.

8 Q. Okay. Was Arbor Homecare Services one of those companies?

9 A. Yes. Arbor was a client.

01:13 10 Q. Arbor was a client. Now, as a client, what products or
11 services did Axxess provide to Arbor?

12 A. We provided EMR, electronic medical record system, to
13 Arbor for their home health services.

14 Q. So an electronic medical record system?

15 A. Uh-huh.

16 Q. How did that work?

17 A. Well, the EMR is a system where you can store your patient
18 records, you can schedule your visits, you can file your
19 claims, your billing and your reporting, your annual reporting.

01:14 20 So it's a comprehensive system.

21 Q. Was there an application that went along with it?

22 A. Yes.

23 Q. Can you describe for the jury how that worked?

24 A. Yes. The application that I just described, you gain
25 access to it, you -- we typically, for the administrative

1 agency, create credentials for them to be able to access the
2 system, and from there they are able to create additional
3 users, who in turn can complete their documentation and use the
4 system for their daily running of the operation.

5 Q. So Axxess, in other words, Axxess kind of sets up for a
6 client, like Arbor, a specific database and web application?

7 A. Web application, yes.

8 Q. And you mentioned something about users for the database.
9 How could the users access the Axxess database?

01:15 10 A. So the users have their own email addresses and
11 credentials, passwords to access the system.

12 Q. Okay. And once Arbor was set up on the Axxess system,
13 could they add documents and records into the system?

14 A. Absolutely.

15 Q. How would they do that?

16 A. Well, once they log in, we have visit notes, we have
17 orders in the system that they can fill out. The system also
18 allows them to upload notes that they've completed by hand into
19 the system as well.

01:16 20 Q. Have you heard of the term "audit trail"?

21 A. Yes.

22 Q. What's an audit trail?

23 A. So an audit trail, in our situation, is just an electronic
24 way of storing all the actions that a user performs in our
25 system. So we are able to retrieve all the action undertaken

1 in the system. So that's what the audit trail is.

2 Q. And was there an audit trail for Axxess's application?

3 A. Yes.

4 Q. Okay. Now, with Arbor's use of the Axxess system, were
5 users at Arbor able to send and receive messages through
6 Axxess?

7 A. Yes.

8 Q. How did that work?

9 A. So we do have a messaging functionality within the system
01:16 10 that they are able to use to send information within the
11 system.

12 Q. So when a user logged or logs into the Axxess application
13 for Arbor, is it possible for that user to run searches on the
14 application?

15 A. It is.

16 Q. How does that work?

17 A. In the system we provide functionality to search for
18 patients by their names or their medical record numbers.

19 Q. Okay. And so is it possible to run a search in the system
01:17 20 for a particular patient to find their records?

21 A. Yes, absolutely.

22 Q. Okay. Mr. Olowu, at some point in response to a search
23 warrant, did Axxess provide the government with a copy of its
24 database for Arbor?

25 A. Yes, we did.

1 Q. And was there -- is there a term for the way that Axxess
2 provided that data to the government?

3 A. Yes. What we do is when we respond to that, we copy or
4 replicate or clone the database so that we can have a snapshot
5 of the data as of that time based on the request we got from
6 the government.

7 Q. Okay. And was that back in April of 2016?

8 A. That is correct.

9 Q. Okay. And that replicated database that was provided to
01:18 10 the government at that time, was that a copy of the same data
11 that Arbor had used?

12 A. Yes, that is correct.

13 Q. Fair to call that a snapshot?

14 A. Yes, it's a snapshot.

15 Q. Now, after that snapshot or when that snapshot was
16 provided to the government, could the government change or
17 alter Arbor's data within that replicated database?

18 A. No. No, the government isn't able to do that.

19 Q. Why do you say no?

01:18 20 A. Because when we clone -- well, the government only has
21 access to a read-only version of the data.

22 Q. When you say it's read-only version of the data, what does
23 that mean?

24 A. Yes. I should explain. It means that you can't make
25 changes to it, that you can only view the data that was copied

1 from the original database.

2 Q. Okay. Now, so that copy of the database, the replicated
3 database that was provided to the government, did that database
4 contain records of Arbor?

5 A. It did.

6 Q. Okay. And were those records that were made and kept in
7 the ordinary course of business?

8 A. Yes.

9 Q. Okay. Mr. Olowu, what were the -- what are the types or
01:19 10 categories of the record -- of records that were kept in the
11 Axxess database for Arbor?

12 A. So we kept orders like physician notes and plan of cares;
13 we kept nursing documents, like skilled nursing notes; therapy
14 documents; aide documents; as well as summaries and other types
15 of notes.

16 Q. How about OASIS documents?

17 A. Yes. OASIS is a nursing note.

18 Q. Okay. Got it. One of the types of documents you
19 mentioned, Mr. Olowu, was a plan of care?

01:20 20 A. That's correct.

21 Q. Are you familiar with what that is?

22 A. Yes, I am.

23 Q. Can you just generally describe that to the jury, what
24 that means?

25 A. So a plan of care document is usually created by the

1 assessing clinician, and it contains the orders or the goals
2 that the clinician has for the patient in that episode of care.

3 Q. Mr. Olowu, if you wanted to go into Axxess and look at a
4 plan of care for a patient of Arbor --

5 A. Yes.

6 Q. -- what would you do? How would you do that?

7 A. Well, I mean, you log in securely with your credentials,
8 and you go to the patient's chart, you identify the patient you
9 want. From the chart you can filter by the type of documents
01:21 10 you want, nursing documents. In this case, an order. You can
11 filter by orders, and you would see a listing of all of the
12 orders that belong to the particular patient, and then you can
13 click on it to enter it in or if you wanted to view it, you
14 would click on a print icon that gives you a preview of the
15 plan of care, so you can see a view of it.

16 Q. Okay. And does that way of searching for something, does
17 that -- does that have a name? Is there a term you use to
18 describe that?

19 A. For the chart?

01:21 20 Q. To kind of get to that print view, how do you refer to
21 that?

22 A. Well, we just say it's a print preview of the document.

23 Q. Okay.

24 A. Yes.

25 Q. And so for a plan of care, if you searched it and you use

1 the print preview to find it, would that plan of care include
2 any addendum or addenda?

3 A. Yes, it would.

4 Q. Okay. And that would be two, three pages?

5 A. That's correct.

6 Q. Okay. Now, let me ask you this, is it possible for a user
7 to print out hard copies of Arbor documents from the Arbor
8 Axxess database?

9 A. Yes, it is possible. You can use the print functionality
01:22 10 that I just mentioned. The print preview allows you to print
11 that out. You can also use a bulk feature to print several
12 documents at the same time.

13 Q. Okay. Now, Mr. Olowu, in front of you on the witness
14 stand there's a binder of records. Do you see that?

15 A. Yes, I do.

16 Q. Okay. And let me just -- let me ask you and just, you
17 know, make clear what's in there. Do you see that that
18 contains Exhibits 410 through 429?

19 A. Yes. 410 to 429, yes.

01:23 20 Q. Okay. And then 431 to 461?

21 A. Yes.

22 Q. Okay. And then do you see it has Exhibits 463 to 485?

23 A. Yes, I do.

24 Q. I tried to skip some to keep it interesting.

25 Then do you see it has 489 -- Exhibits 489 to 497?

1 A. Yes, I do.

2 Q. Okay. And then it also has Exhibits 499 to 515; do you
3 see that, also?

4 A. Yes, I do.

5 Q. Okay. And then it's got Exhibits 517 to 532?

6 A. Yes, I do.

7 Q. And then do you see Exhibit 537 in the binder?

8 A. Yes, I do.

9 Q. And then from there it's from 539 to Exhibit 548; do you
01:24 10 see that?

11 A. Yes. Yes, I do.

12 Q. And then to round it out, do you see Exhibits 706 to 710?

13 A. Yes, I do.

14 Q. Okay. Any other exhibits I missed that are in that
15 binder?

16 A. No.

17 Q. Okay. Now, Mr. Olowu, did you have a chance to review
18 those exhibits prior to your testimony?

19 A. Yes, I did.

01:24 20 Q. Okay. And based on your review, what are those records
21 generally?

22 A. So from my review, these documents came from our system.
23 They look -- well, they are skilled nursing notes that were
24 OASIS documents in there, plan of care documents in there.
25 There were several types of documents that were printed from

1 our system in this exhibit.

2 Q. Just to be clear, Mr. Olowu, did you go through that
3 binder and compare that to what's in the Arbor database --

4 A. Yes, I did.

5 Q. -- in Axxess?

6 A. Yes, I did.

7 Q. You did that yourself?

8 A. I did that myself.

9 Q. Okay. And what did that exercise, that comparison, what
01:25 10 did it show?

11 A. Well, it showed that the exhibits that you have is
12 consistent with what we have in the system.

13 Q. Okay. Let me ask you kind of a separate question.

14 If you wanted to print out the medical records for a
15 single patient in Axxess and you wanted to do it in bulk, is
16 there a way to do that?

17 A. Yes. We have that bulk export functionality, yes.

18 Q. Something called a bulk export?

19 A. Yes. A bulk printing, bulk export, yes.

01:25 20 Q. Can you explain to us what happens when you use that bulk
21 export functionality?

22 A. So what happens is when you use it on a particular patient
23 chart, it takes all the documents associated with that patient
24 and it puts it in a file format, a PDF format for printing, and
25 it, you know, aggregates all of that in one place where you can

1 print it at once, instead of printing the documents one at a
2 time.

3 Q. And if you were to print the documents one at a time, that
4 could be thousands of pages, right?

5 A. Yes.

6 Q. Okay. So if you wanted to print out a large volume of
7 documents for a single patient, which functionality would you
8 use?

9 A. I'll use the bulk.

01:26 10 Q. Okay. Now, when a user like yourself of Axxess uses the
11 bulk export to print an entire record for a patient in hard
12 copy -- are you with me?

13 A. Yes.

14 Q. -- does the entire document always print out?

15 A. No. We do have some documents that don't make it into the
16 export.

17 Q. Okay. What exactly are those documents when you print it
18 out that way?

19 A. So if you print it out using the bulk export
01:27 20 functionality, documents that were uploaded by users into our
21 system that were not entered directly into the system but that
22 was uploaded by the user don't make it into the export, but
23 they are part of the patient's chart. They just don't -- based
24 on the functionality of the export, it doesn't pull those
25 files. It also, we noticed, didn't pull the addendum in the

1 485 for the plan of care for some of the documents.

2 Q. And you used the term "in the 485." Is that another term
3 used to describe the plan of care?

4 A. Yes. I apologize. It's the original document type for
5 the plan of care, but since it's referred to as plan of care.
6 Sorry. I've been doing this a long time.

7 Q. And that's just the way the code works for the bulk print;
8 is that right?

9 A. That's right. That's just the way the code works.

01:27 10 Q. It just pulls out the first page instead of the addendum?

11 A. Yes, it pulled out the first page and didn't print out the
12 addendum.

13 Q. Let me ask you this, Mr. Olowu, even though the first page
14 comes out in that bulk print, what happens to the data? Is the
15 data still in the database?

16 A. The snapshot is still intact. The data is still there.
17 The bulk functionality just didn't show the additional data.

18 Q. And other than the plans of care, does the software code
19 issue, does that affect any other documents?

01:28 20 A. No.

21 Q. Okay. And how do you know that? Are you confident that
22 that's the case?

23 A. I am because I looked through it. I took some time to
24 look at it.

25 Q. Okay. So, Mr. Olowu, if I could direct your attention

1 back to that binder in front of you.

2 A. Sure.

3 Q. Does that binder contain exhibits that are copies of
4 records from the Arbor Axxess -- the Arbor-replicated database
5 that was maintained by Axxess?

6 A. Yes, it does.

7 Q. And are those records that were made, kept and maintained
8 in the ordinary course of business?

9 A. Yes.

01:29 10 MR. BRADY: Your Honor, I offer -- I offer these
11 exhibits, and I can read the numbers into the record, Your
12 Honor. I did it before.

13 THE COURT: I got some of them down but not all of
14 them. So let's just make a record of what exhibits you are
15 moving in. It's 410 to 429.

16 MR. BRADY: Correct.

17 THE COURT: 431 to 461.

18 MR. BRADY: Correct.

19 THE COURT: 463 to --

01:29 20 MR. BRADY: 485.

21 THE COURT: -- 485. What's the next batch?

22 MR. BRADY: 489 to 497.

23 THE COURT: Yes.

24 MR. BRADY: 499 to 515.

25 THE COURT: Yes.

1 MR. BRADY: 517 to 532.

2 THE COURT: And then 537.

3 MR. BRADY: Yes, Your Honor.

4 THE COURT: 539 to 548 and 706 to 710.

5 MR. BRADY: You got it, Your Honor.

6 MR. VIEN: Your Honor, I don't object. I think the
7 foundation is fine.

8 THE COURT: Yes.

9 MR. VIEN: We can deal with it later, not to waste
01:30 10 everyone's time, about -- I have about eight exhibits that I
11 have sub or specific objections to, but as far as the
12 foundation, I think that's what was necessary.

13 THE COURT: Okay. So I'm going to admit those
14 documents. I'm not going to use the jury's time now to go
15 through the eight that he has an issue with. So are you going
16 to ask him about individual documents or no?

17 MR. BRADY: Your Honor, what I plan to do is put up
18 maybe one or two examples real quick.

19 THE COURT: If one or two examples happen to be one or
01:30 20 two of his eight, we'll find a different example.

21 MR. BRADY: We don't need to make a mess, Your Honor.
22 (Exhibits 410 to 429, 431 to 461, 463 to 485, 489 to
23 497, 499 to 515, 517 to 532, 537, 539 to 548, and 706
24 to 710 admitted into evidence.)

25 THE COURT: Go ahead, Mr. Brady.

1 MR. BRADY: Thank you, Your Honor.

2 Ms. Apfel, could you please pull up Exhibit 417.

3 BY MR. BRADY:

4 Q. All right. Mr. Olowu, can you see Exhibit 417 on the
5 screen in front of you?

6 A. Yes, I can.

7 MR. BRADY: And, Ms. Apfel, maybe we --

8 BY MR. BRADY:

9 Q. Well, let me ask you this first. What is this? Do you
01:31 10 recognize what kind of document this is?

11 A. Yes, I do.

12 Q. What is this document?

13 A. This is a plan of care.

14 Q. And can you tell -- excuse me.

15 MR. BRADY: Maybe, Ms. Apfel, if we could blow up the
16 top half.

17 BY MR. BRADY:

18 Q. Can you tell who the patient is?

19 A. Yes, you can.

01:31 20 Q. Okay. Who is the patient's name?

21 A. It's Ernest Cate.

22 Q. Okay. Let's back out of that, and then let's --

23 MR. BRADY: We can take that down.

24 BY MR. BRADY:

25 Q. I was going to ask you about a nursing note, but I think

1 we've seen enough of those.

2 MR. BRADY: So nothing further, Your Honor.

3 THE COURT: Mr. Vien.

4 MR. VIEN: I couldn't hear that, Your Honor.

5 THE COURT: He says nothing further.

6 MR. VIEN: Oh, good. I just have a couple of
7 questions.

8 THE COURT: That's fine.

9 CROSS-EXAMINATION BY MR. VIEN:

01:32 10 Q. Good afternoon.

11 A. Good afternoon.

12 Q. My name is George Vien, along with me is Michelle
13 Pascucci. We represent the defendant, Faith Newton, in this
14 case.

15 You -- what happened here is you received a search warrant
16 and then gave the government an image of the records that are
17 in your system; is that correct?

18 A. That is correct.

19 Q. And once you did that, you did it in a read-only version,
01:32 20 and so that means that after the government received it or as
21 soon as you made the image, those documents couldn't be
22 altered?

23 A. That's correct.

24 Q. Just like the name implies, it can only be read, right?

25 A. That's correct.

1 Q. Now, prior to that time, if people had a password, could
2 they go into the system and edit the documents?

3 A. Yes.

4 Q. Okay. And the -- if you had someone else's -- if I, for
5 instance, not to -- if I had someone else's password, could I
6 log on as them and go in and alter documents?

7 A. You could if you had all the -- if you had their
8 credentials, yes.

9 Q. And you referred to them I think as EMRs?

01:33 10 A. Yes.

11 Q. And with other EMRs, there's something called
12 auto-populate?

13 A. Yes.

14 Q. Does Axxess have that?

15 A. We do have some of that functionality.

16 Q. Okay. Could you explain to the jury what auto-populate
17 means?

18 A. Well, auto-populate just means that if there's a piece of
19 information that is known to be accurate, for instance, the
01:33 20 patient's name, when you create a new document, you can
21 automatically populate it with the patient's name. They don't
22 have to fill the patient's name again on every document. So
23 it's auto-populated into the new note.

24 Q. And what about in other EMRs, if you check a particular
25 box and auto -- something will auto-populate, a narrative, is

1 that a functionality of Axxess?

2 A. Could you be specific? If you check --

3 Q. Check a particular diagnosis or something else, a
4 narrative will auto-populate?

5 A. In our system specifically or other EMRs?

6 Q. In your system during 2014 to 2017.

7 A. No.

8 Q. Okay. What auto -- what auto-populated in your system
9 during 2014 to 2017?

01:34 10 A. So for the documents we're looking at, it would usually be
11 the demographic information. So patient name, Social Security
12 number, the things that we already collected that is required
13 on the additional document is moved over.

14 Q. Now, you said the -- it would usually be demographic
15 information, and I just want to try to, you know, nail it down.
16 Was it other information as well; do you know?

17 A. Could you clarify?

18 Q. The question relates to auto-populate.

19 A. Yes.

01:35 20 Q. Okay. And I asked if from 2014 to 2017 was -- did the
21 system have that functionality, did it auto-populate?

22 A. Yes.

23 Q. When you went wrote John Smith --

24 A. Yes.

25 Q. -- birth date would pop up?

1 A. Yes.

2 Q. Okay. During the time period 2014 to 2017 with your
3 program, was there other functionality that related to
4 auto-populate?

5 A. Yes, I'm sure we do.

6 Q. Okay. Do you know what those are?

7 A. Outside of the demographics that we collect during intake,
8 I can't think of any right now.

9 Q. Okay. But there were some?

01:36 10 A. Oh, yes. I'm sure there were.

11 Q. You just -- you know, obviously it's 2014 to '17. You
12 just don't know off the top of your head what those things
13 were?

14 A. Uh-huh.

15 Q. Now, in other EMRs, auto-populate, if you checked the box
16 for diagnosis or something like that, then a narrative would
17 pop up; is that true?

18 A. I can't -- I don't know which software you're talking
19 about.

01:36 20 Q. You're a loyal Axxess man?

21 A. I'm a loyal guy, yeah.

22 Q. We just don't know what else auto-populated during that
23 relevant time period, right?

24 A. Uh-huh.

25 Q. I don't mean to waster your time, but you're from Dallas?

1 A. I am from Dallas.

2 Q. Is it really that hot down there right now?

3 A. It is.

4 Q. How hot is it?

5 A. 105.

6 Q. Wow. Thank you.

7 MR. VIEN: I don't have anything further.

8 THE COURT: Recross?

9 MR. BRADY: No, nothing further, Your Honor.

01:37 10 THE COURT: No more questions about the weather in
11 Dallas? You're excused.

12 THE WITNESS: Thank you.

13 MR. LOONEY: The government calls Adriana O'Donoghue.
14 May I just retrieve the binder?

15 THE COURT: Yes, of course.

16 THE CLERK: Will you raise your right hand.

17 (Witness sworn.)

18 THE WITNESS: Yes.

19 THE CLERK: Thank you. You may be seated.

01:38 20 Will you please state your name and spell your last
21 name for the record.

22 THE WITNESS: My last name?

23 THE CLERK: Yes.

24 THE WITNESS: Is O'Donoghue, capital O, apostrophe,
25 capital D, as in David, O-N-O-G-H-U-E.

1 THE CLERK: Thank you.

2 ADRIANA O'DONOGHUE, duly sworn.

3 DIRECT EXAMINATION BY MR. LOONEY:

4 Q. Good afternoon, Ms. O'Donoghue.

5 Down here (indicating).

6 Could you pull your microphone closer to you, just so I'm
7 able to hear you.

8 A. Sure.

9 THE COURT: The whole stand moves. Not just the arm,
01:38 10 the whole stand.

11 A. Like this. Thank you.

12 Q. All right. Can you just introduce yourself to the jury,
13 starting with just your name.

14 A. Adriana.

15 Q. And last name, just so...

16 A. O'Donoghue.

17 Q. Ms. O'Donoghue, can you describe your education, just
18 starting back in high school and moving forward.

19 A. I studied psychology. So I have a bachelor of science in
01:39 20 psychology.

21 Q. Okay.

22 A. And also, I have a human services, graduating from the
23 Springfield College.

24 Q. From Springfield --

25 A. From Springfield College.

1 Q. Where do you live now?

2 A. I am in between Lawrence and also New Hampshire because --
3 for, you know, other personal reasons.

4 Q. Okay. Are you currently employed?

5 A. I am retired, but I'm working now and then, yes.

6 Q. Okay. What do you do now and then?

7 A. I actually continue working with elderly.

8 Q. Okay. In what capacity?

9 A. I do multiple things, like social worker, you know,
01:40 10 duties. I also do companion for just a couple of them that I
11 know. I don't do from the streets or for anybody, no.

12 THE COURT: I'm sorry. I didn't hear who she worked
13 for. I just didn't catch it.

14 MR. LOONEY: Currently?

15 THE COURT: Yes. I just didn't hear what she said.

16 MR. LOONEY: She's retired but works periodically with
17 the elderly.

18 THE COURT: With the elderly, okay.

19 MR. LOONEY: Yes.

01:40 20 BY MR. LOONEY:

21 Q. I would like to go back in time a little bit. Was there a
22 time when you became aware of a company called Arbor Homecare
23 Services?

24 A. Yes.

25 Q. Okay. At the time that you became aware of the company,

1 where were you working then?

2 A. I was the assistant director for a private company called
3 Lowell Eldercare.

4 Q. All right. And how did you become aware or how did you
5 find out about Arbor Homecare?

6 A. I also was acting as a social worker for that private
7 company, and I met a person who was working for Arbor. And she
8 came to my office and asked -- you know, she wanted to actually
9 work for my company, and there was no position available. That
01:41 10 was the first time I met this woman who worked for Arbor.

11 Q. Okay. Who was that?

12 A. Airanisse.

13 Q. Airanisse. Do you remember her last name?

14 A. No, I don't.

15 Q. And what did Ms. Airanisse tell you about Arbor?

16 A. Well, she was -- she was working for Arbor, and she said
17 she was doing two things there. She was doing some marketing
18 and also doing PCA or something, you know, personal care
19 assistant.

01:41 20 Q. Okay. Did you come to work with Arbor at some point in
21 time?

22 A. Yes. Later when I left the company --

23 Q. I am going to pause you. I want to move in sequence.

24 Not work for them, but did you -- did your relationship
25 with Arbor go forward past that meeting with Ms. Airanisse?

1 A. Yes. Actually, when Airanisse offered me to do some
2 marketing because, you know, we have to exchange members from
3 my company to Arbor company and mention that they work, you
4 know -- they needed to do that marketing, and then I said she
5 talk about it, about, you know, other things. And she said
6 that if I could refer them, you know, my members, and she would
7 also help me to refer me -- the members from Arbor.

8 Q. Okay. Did you eventually come to refer people to Arbor?

9 A. Yes. So I --

01:43 10 Q. I was going to ask you how that came about?

11 A. Say that question again.

12 Q. How did that come about?

13 A. About, okay. So I -- I asked to meet with the owner of
14 the company, Arbor.

15 Q. Okay. Did you?

16 A. Yes, I did went to meet with the owner of the company.

17 Q. Okay. And who was that?

18 A. Faith Newton.

19 Q. Okay. When you met with Ms. Newton, did you discuss --
01:43 20 what did you discuss with her?

21 A. As soon as we saw each other, we recognized our faces
22 together.

23 Q. Okay. You had met her before?

24 A. Yes, I did.

25 Q. Okay. And where did you recognize her from?

1 A. I work as a case manager for another company, MHA. They
2 called them Mental Health Associates.

3 Q. Okay. And at that time, what was Ms. Newton doing?

4 A. She was the visiting nurse from one of those vendors.

5 Q. Going back to when you met Ms. Newton at Arbor, what did
6 you discuss?

7 A. I went right to the point, that what Airanisse actually
8 presented to me in my office. And I said, I understand that
9 you are recruiting members, and I'm here actually to know more
01:44 10 about it. And we talk about it, you know, how -- you know, it
11 is -- for me, I was -- my job also was recruiting members for
12 the company that I was working, and we talk about that,
13 recruiting one another.

14 Q. Okay. Did she ask you to do anything?

15 A. Yes. She told me that if I refer her members to Arbor,
16 she will pay me \$100 per person.

17 Q. Okay. Did you enter some agreement or reach some
18 understanding?

19 A. It was a verbal agreement.

01:44 20 Q. Okay. And what was that verbal agreement?

21 A. She will pay me \$100 per member.

22 Q. All right. At the time that you entered this agreement,
23 did you know whether it was legal or illegal to pay for the
24 referral of patients to Arbor?

25 A. No, I didn't know at all, because at the Lowell Eldercare,

1 they also pay bonus to the members, to the staff, and also, you
2 know, for referrals.

3 Q. Okay. So they were doing the same thing. So you did not
4 believe it was illegal at that time?

5 A. No, I did not know it was illegal.

6 Q. Okay. Did you actually refer patients to Arbor?

7 A. Yes, I did.

8 Q. Okay. Do you recall how many?

9 A. Well, the total amount number is this, according to my
01:45 10 memory, I sent 40, 45. However, I was never paid for 40 or 45
11 referrals.

12 Q. Okay. Do you know how many patients you were actually
13 paid for --

14 A. Yes.

15 Q. -- or approximately?

16 A. The first time that she paid me \$300 in cash, and then I
17 got another check for \$600, and another check for \$500. So it
18 will be like \$1,400 that I was paid.

19 Q. Okay. That's a total amount you were paid?

01:46 20 A. Yes.

21 Q. For referring how many patients?

22 A. That's 14 people.

23 Q. Okay. And I think you said that you were paid first in
24 cash?

25 A. Yes, I was paid cash.

1 Q. How much in cash?

2 A. \$300.

3 Q. Okay. And then subsequently you were paid in -- you said
4 two checks; is that right?

5 A. Yes. Because I told Ms. Newton that I didn't want to take
6 any cash because my husband told me that I needed -- I needed
7 for, you know -- how you call them -- to retrieve where the
8 money was coming from, I needed to really know to pay, you
9 know, by check.

01:47 10 Q. Okay. So you wanted a record of the payments?

11 A. That's correct.

12 Q. What was Ms. Newton's response to that request?

13 A. I don't think she -- I don't think she did agree with
14 that, because she did not like it, no.

15 Q. Okay. Were you eventually paid by check, though?

16 A. She was -- she didn't have no other choice, I guess,
17 because I was not going to get any cash.

18 Q. Okay. I would like to show you -- and just for the Court
19 and the witness at this point -- what's been marked as Exhibit
01:47 20 536.

21 It's very small. That's a little bigger, all right.

22 Do you recognize this document? And then we can also
23 show the next page as well.

24 A. Yes, I can see that.

25 Q. Okay. Do you recognize this document?

1 A. Yes, I do.

2 Q. Okay. What are these two items?

3 A. This is a --

4 Q. Let's start with the second one.

5 A. -- a check paid.

6 Q. The second one, what's this document?

7 A. It's a check from Arbor, from Arbor Homecare Services for
8 \$500.

9 Q. Who is it made out to?

01:48 10 A. It's made out to me.

11 Q. And what's the date?

12 A. The date?

13 Q. Yes.

14 A. It's March 27th, 2014.

15 Q. Okay. Is this a check that you received?

16 A. Yes, I did.

17 Q. Okay. From whom did you receive this?

18 A. It's BE. It must be for Benjamin, and the last name is
19 not recognized here. But it must be the person who was the
01:48 20 owner with her.

21 Q. But my question is a little bit different. How did you
22 physically get this check? From whom?

23 A. It was handed to me. She did hand it to me. I never met
24 the other person.

25 Q. When you say "she," who do you mean?

1 A. Excuse me?

2 Q. You said she gave it to me.

3 A. It's Mrs. Newton gave it to me.

4 Q. Okay. And can we go back to the first page. And do you
5 recognize this document?

6 A. Yes, I do.

7 Q. And what is it?

8 A. It's a check written for \$600 on May 6th, 2014.

9 Q. Okay. To whom?

01:49 10 A. Written to me, Adriana O'Donoghue.

11 Q. And whose name appears in the signature line?

12 A. Faith Newton.

13 MR. LOONEY: All right. I'd ask that this be admitted
14 as Exhibit 536.

15 MS. POSCUCCI: No objection, Your Honor.

16 THE COURT: It's admitted.

17 (Exhibit 536 admitted into evidence.)

18 BY MR. LOONEY:

19 Q. All right. Looking at these two images, and let's go to
01:50 20 the second one first again.

21 THE COURT: You are admitting the two checks as 536?

22 MR. LOONEY: Yes.

23 BY MR. LOONEY:

24 Q. What was -- why was this check given to you?

25 A. It was for referrals.

1 Q. And what did that mean?

2 A. I was paid for the members that I referred to her company.

3 Q. Okay. And it was \$500?

4 A. Correct.

5 Q. In March of 2014?

6 A. Excuse me?

7 Q. In March of 2014?

8 A. Yes, March 27th, '14.

9 Q. Okay. And then is the check on the first page -- if you
01:50 10 go back to it. What was the check on the first page payment
11 for?

12 A. Yeah, it's for \$600, May 6th, 2014.

13 Q. Okay. And -- okay.

14 MR. LOONEY: We can take that down now.

15 BY MR. LOONEY:

16 Q. I would like to change topics for a moment.

17 How did you communicate with Ms. Newton?

18 A. We did phone calls and also by text messages.

19 MR. LOONEY: Okay. Could we put up for the witness
01:51 20 and lawyers and the Court only Exhibit 654.

21 BY MR. LOONEY:

22 Q. Do you recognize the contents of this document?

23 A. Yes, I do.

24 Q. Okay. And what is it?

25 A. It is -- we are communicating with each other, Ms. Newton

1 and I.

2 Q. Okay. What kind of communications?

3 A. Well, this is -- the first line, you want me to read it?

4 Q. You mentioned emails, phone calls, text messages. What
5 are these?

6 A. It says, well, "Dear Mrs. Faith" --

7 Q. What type of communication is this?

8 A. We were talking about money.

9 Q. But what mode of communication? Is this phone messages?

01:52 10 A. No. This was a text message.

11 Q. Okay. So the contents are text messages exchanged between
12 yourself and Faith Newton?

13 A. Yes, Ms. Newton.

14 Q. And do you recognize the content of these?

15 A. Yes, I do.

16 Q. Okay.

17 MR. LOONEY: I'd ask that this be admitted as Exhibit
18 654.

19 MS. POSCUCCI: No objection. Your Honor.

01:52 20 THE COURT: Admitted. 654, right?

21 MR. LOONEY: Yes. I apologize for not speaking loudly
22 enough.

23 THE COURT: I thought you said 624.

24 MR. LOONEY: 654.

25 (Exhibit 654 admitted into evidence.)

1 BY MR. LOONEY:

2 Q. All right. Could we go to the message beginning "Hi Dear
3 Faith. It's me Adriana." Could you just read that out loud
4 and the next message as well.

5 A. "Hi Dear faith. It's me Adriana O'Donoghue. When is a
6 good time to see you to talk about business? I have more
7 referrals. However, I like to sign a contract for the bonus,
8 if it's okay with you? Contact me direct," and I -- I gave my
9 phone number.

01:53 10 Q. Okay. What were you talking about when you mentioned
11 referrals in that text message?

12 A. It was, you know, that -- what we discuss about verbally,
13 you know, the bonus, the \$100 for referrals.

14 Q. And then there is a reference to "I like to sign a
15 contract." Did you do so?

16 A. No. It was never written down.

17 Q. Okay. Why not?

18 A. I am sure she didn't want to sign a contract.

19 Q. Could we go to page 12 of this document.

01:54 20 A. Page 12?

21 THE COURT: Do you want to give a Bates number?

22 MR. LOONEY: Bates number 778.

23 A. 778.

24 Q. It should pop up on the screen for you, Ms. O'Donoghue.

25 A. Okay. You are talking about 778, okay. I've got it.

1 What part?

2 THE COURT: It's the last page.

3 MR. LOONEY: Last page of the document.

4 Q. And then there's a message that's dated 8/10/2015
5 beginning with "Good morning, Faith. Please review my salary."

6 A. 8/10/15. Okay.

7 Q. We'll blow it up for you in a second.

8 A. Okay.

9 Q. Do you see the one that says, "Good morning, Faith.

01:54 10 Please review my salary"?

11 A. Yes. "Good morning, Faith. Please review my salary. It
12 was offered to be paid \$14 per hour. I did not realize the
13 rate is too low. I gave you over 45 clients directly to others
14 directly. I really appreciate you change the hour rate for me.
15 God will be with you always and keep prospering you in life.
16 God bless, Adriana."

17 Q. Did you in fact refer over 45 clients to Ms. Newton.

18 A. I did. My office -- from my office actually I did refer
19 her, yes.

01:55 20 Q. Were you paid for 45 clients?

21 A. No.

22 Q. Why not?

23 A. There was -- Mrs. Newton never wanted to see me, I guess,
24 regarding this verbal agreement.

25 MS. POSCUCCI: Objection, Your Honor.

1 THE COURT: Sustained.

2 BY MR. LOONEY:

3 Q. Okay. Did you try and get paid for 45 clients for
4 Ms. Newton?

5 A. Yes, I tried, but it never happened.

6 Q. And what was the response you received?

7 A. She was actually refusing. She was ignoring me after the
8 that.

9 Q. Okay. Did she tell you why you would not be paid for the
01:56 10 45 clients?

11 A. There were other people being paid for the referral that I
12 made.

13 MS. POSCUCCI: Objection.

14 THE COURT: Lay a foundation for that, please.

15 BY MR. LOONEY:

16 Q. When you say -- what did Ms. Newton tell you about why you
17 weren't paid for 45 clients?

18 A. Because there were other people that were trying to get
19 paid, yes. They say they referred them, not I didn't refer
01:56 20 them. So they referred them and not that I referred them, and
21 that was the issue in the office.

22 Q. I just want to be clear, is that the reason that
23 Ms. Newton gave to you?

24 A. Yes.

25 Q. Okay. This text message references the phrase -- it says,

1 "Please review my salary," correct?

2 A. The salary about the \$14 is --

3 Q. Let me just ask a question.

4 From whom were you -- what does that salary refer to?

5 A. This is actually for the personal care position that I
6 applied for a couple of clients, you know.

7 Q. Okay.

8 A. And they offer to pay -- they offer me to pay \$14, but
9 actually they were only paying \$11 per hour and something.

01:57 10 Q. Sorry. Okay. Let me start with this question: Did
11 you -- did you become an employee of Arbor at some point in
12 time?

13 A. I did. I did. Because in order to be employed for that,
14 Arbor, you were supposed to have your own referral.

15 MS. POSCUCCI: Objection.

16 THE COURT: Hold on a second.

17 MS. POSCUCCI: It was a yes-or-no question.

18 BY MR. LOONEY:

19 Q. Okay. So the question was, and this is just yes or no.
01:57 20 Did you become an employee of Arbor at some point?

21 A. Yes.

22 Q. Can you tell me how you became employed by Arbor? What
23 was the hiring process for you?

24 A. The hiring process, I got the application, completed an
25 application, and then my client was submitted to and admitted

1 to Arbor, and I did the work.

2 Q. Okay. I want to ask you a couple of things. When you say
3 your client was admitted to Arbor, what was that?

4 A. It was one of my referrals that it have to be. I didn't
5 have anybody's client. It was somebody that I referred to
6 Arbor.

7 Q. So you referred a client to Arbor --

8 A. Correct.

9 Q. -- at the same time?

01:58 10 A. Correct.

11 Q. When you say client, someone who would be a patient at
12 Arbor?

13 A. Yes.

14 Q. And at the same time you applied to be a -- what position
15 at Arbor?

16 A. I applied for, you know, for personal care assistant for
17 the person I referred to because I didn't think anybody will
18 take, you know, a client from the street, so you have to be --
19 you have to apply for the job if you want to work and have
01:58 20 somebody who really needed you.

21 Q. Okay. So in order to apply for a job at Arbor, you needed
22 to bring with you a patient?

23 A. That's correct.

24 MR. LOONEY: Okay. We can take this down, Ms. Apfel.

25 BY MR. LOONEY:

1 Q. And what was your understanding at the time you applied
2 for a job at Arbor, what position you were applying for?

3 A. I did apply for personal care assistant or management
4 position.

5 Q. Personal care assistant or PCA and/or management position?

6 A. Correct.

7 Q. Okay.

8 MR. LOONEY: Ms. Apfel, could you bring up Exhibit
9 363, which was previously admitted, and could we go to the
01:59 10 third page of this document which bears Bates number 806.

11 BY MR. LOONEY:

12 Q. Do you recognize this document?

13 A. Yes, I do.

14 Q. Okay. And there is a line -- what is this document?

15 A. This is an employment application.

16 Q. Okay. Is it an employment application that you filled
17 out?

18 A. Yes, I did.

19 Q. Applying for what job?

02:00 20 A. For personal care assistant or case manager.

21 Q. Where?

22 A. For Arbor.

23 Q. Okay. And is that your name that appears on the line,
24 last name, first name?

25 A. Yes, it is.

1 Q. Okay. And is that your handwriting?

2 A. Yes, it is.

3 Q. And then the date of application is February 25th, 2014?

4 A. Yes.

5 Q. Is that the date you applied for a job with Arbor?

6 A. I don't remember, but it's there written.

7 Q. Okay. Is that approximately the time when you applied for
8 a job at Arbor?

9 A. I guess so.

02:00 10 Q. You are not certain?

11 A. No, I'm not certain.

12 Q. Okay. And then on the "Position applying for" line, it
13 says, "PCA or case manager"?

14 A. Yes.

15 Q. Okay. Is that the role you understood you were applying
16 for?

17 A. Yes.

18 Q. Did you understand that you were applying for a job as a
19 home health aide?

02:01 20 A. No.

21 Q. Okay. Could we go to page 14 of this document, and I'll
22 give you the Bates number in just one moment. 817.

23 The first question, did you ever see this document during
24 the time you were at Arbor Homecare?

25 A. This is a certificate for Adriana Kam-O'Donoghue written

1 by Faith Newton, I never saw that.

2 Q. At your time at Arbor, did you ever see it?

3 A. I never saw it.

4 Q. When is the first time you saw this document?

5 A. Just recently I was presented this.

6 Q. By whom?

7 A. By the USA attorneys.

8 Q. By the government, our office?

9 A. Yes.

02:02 10 Q. Okay. Let me read it out loud, and then I'm going to ask
11 you a couple of questions. This document states, "This
12 certifies that Adriana Kam-O'Donoghue" -- that's you, right?

13 A. Yes.

14 Q. -- "has successfully completed the HHA required course of
15 study approved by the state of Massachusetts and is therefore
16 awarded this certificate." Did I read that correctly?

17 A. Yes, you did.

18 Q. Did you, in fact, successfully complete the HHA required
19 course of study approved by the state of Massachusetts?

02:02 20 A. No, I didn't.

21 Q. Okay. More generally, when you came to Arbor and were
22 employed there, what orientation or training did you receive
23 for your job?

24 A. None.

25 Q. None. Did you ever receive 75 hours of training?

1 A. No, never.

2 Q. Did you take 16 hours of training in a classroom?

3 A. No.

4 Q. Did you receive any onsite training from nurses?

5 A. No.

6 MR. LOONEY: All right. Can we go to page 27 of this
7 document. If we could scroll down to get the Bates number,
8 please. Thank you, Ms. Apfel. This is Bates number 830 at the
9 bottom. And if you go back up to the top. Could we get it on
02:03 10 one page, please -- thanks -- so we can look at the whole
11 thing.

12 BY MR. LOONEY:

13 Q. This document is titled "Orientation For All Direct
14 Patient Care Employees," correct?

15 A. Yes.

16 MR. LOONEY: I'll just wait a moment while we get it
17 up on the screen.

18 BY MR. LOONEY:

19 Q. And there are a number of topics down the left-hand side,
02:03 20 correct?

21 A. Yes.

22 Q. Okay. At the start of your time at Arbor, did you receive
23 training on any of these topics?

24 A. Not at all.

25 Q. Okay. Did you initial this document?

1 A. No, I didn't.

2 Q. Okay. Do you know one way or another whether that's your
3 signature on the employee's signature line?

4 A. It's not my signature.

5 Q. Okay. As part of your orientation and training at Arbor,
6 did you have to take any examinations or tests when you
7 arrived?

8 A. Part of the package it was, yes.

9 Q. When you say part of the package, what do you mean?

02:04 10 A. Part of the package of orientation, part of the
11 orientation there were a lot of packages that you have
12 to complete.

13 MR. LOONEY: Go to page 16 of this document. Okay.

14 BY MR. LOONEY:

15 Q. Do you recognize this document?

16 A. I can see this page, but I didn't complete it.

17 Q. You don't recall taking this test?

18 A. No.

19 Q. Okay. When you did take exams at Arbor, were they
02:04 20 difficult to complete?

21 A. Number one --

22 Q. Not this one. Not this one. Just generally, you
23 mentioned taking exams at Arbor. Was it hard to get the
24 answers correct?

25 A. It was hard, yes, because no training.

1 Q. Okay. Did you have anything to assist you?

2 A. No. There were answers. When I asked the question of the
3 person, they said the answers were located in after --

4 MS. POSCUCCI: Objection. Someone said.

5 A. -- each exam.

6 THE COURT: Hold on. Hold on.

7 Ask the question again.

8 MR. LOONEY: We'll take it in steps.

9 BY MR. LOONEY:

02:05 10 Q. Okay. So you took an exam at Arbor, correct?

11 Did you take an examination -- or fill out an examination
12 as part of your application for orientation at Arbor?

13 A. Yes.

14 Q. Okay. Can you describe how you took that -- how you
15 completed the examination?

16 A. At the last page it was the answers.

17 Q. Okay.

18 A. And all you had to do is copy the answers.

19 Q. Okay. Do you recall --

02:06 20 A. But I don't recall doing this.

21 Q. You don't recall this exam in particular?

22 A. No, no.

23 Q. Okay. Do you recall taking many examinations at Arbor?

24 A. Not many. Because I have to see how, and I see it that I
25 was, you know, I didn't know.

1 Q. Okay. Could we go to page 53 of this document. And do
2 you recognize this document, this page?

3 A. Yes, I do.

4 Q. Okay. Is that your name at the top?

5 A. Yes, it is.

6 Q. And is that your handwriting at the top?

7 A. It is.

8 Q. Okay. Did you fill out this exam?

9 A. Yes, I did.

02:06 10 Q. Before you did, did you receive any training on HIPAA or
11 the Health Insurance Portability Accountability Act?

12 A. Not from Arbor.

13 Q. Okay. Had you had some previously?

14 A. Yes.

15 Q. When you took this test, did you have an answer key as you
16 mentioned before?

17 A. Excuse me?

18 Q. When you took this examination, did you have an answer key
19 for it?

02:07 20 A. Did I have the answers?

21 Q. Did you have a page with the answers?

22 A. Yes. The answers were all the time behind the examination.

23 Q. Okay. So when you took the test, were you taking it from
24 your knowledge or from that piece of paper?

25 A. Honestly, I just wrote what the answer says.

1 MR. LOONEY: Can we go to page 56 of this document.

2 All right.

3 BY MR. LOONEY:

4 Q. And do you recognize this document?

5 A. I can see the results.

6 Q. You can read it?

7 A. Yes.

8 Q. But do you recall it?

9 A. No, because that's not my handwriting.

02:08 10 Q. I was just going to ask. Your name is on the top of this,
11 correct?

12 A. Yes.

13 Q. Is that your handwriting?

14 A. No, it's not.

15 Q. Did you fill out this test?

16 A. No.

17 MR. LOONEY: Okay. Could we go to page 58 of this
18 document. All right.

19 BY MR. LOONEY:

02:08 20 Q. Do you recognize this document?

21 A. You guys presented to me, but medical device form, I don't
22 know.

23 Q. Do you recall it from your time at Arbor?

24 A. No.

25 Q. Is that your name at the top and initial?

1 A. It's my name, but it's not my handwriting.

2 Q. Did you fill out this test?

3 A. No, I didn't.

4 Q. Let me do just one more.

5 MR. LOONEY: Could we go to page 62. Okay.

6 BY MR. LOONEY:

7 Q. Do you recognize this document -- could we go to the next
8 slide, and the next, and the next, and the next.

9 We just scanned through a few tests. Do you recall take
02:09 10 anything of those examinations at Arbor?

11 A. No, none. No.

12 Q. Okay.

13 MR. LOONEY: Can we go to page 145 of this document.

14 All right.

15 BY MR. LOONEY:

16 Q. And this document is titled "Home Health Aide Skills
17 Checklist," correct?

18 A. Yes.

19 Q. All right. And it has your name on it, right?

02:09 20 A. It has my name on it.

21 Q. Is that your handwriting?

22 A. It's not my handwriting, no.

23 Q. And who's listed on the preceptor/supervisor line?

24 A. Faith Newton.

25 Q. Okay. And then there's a date of hire and date completed

1 line. What dates appear on that?

2 A. It is March 3rd, 2014, and completed March 3rd, 2014.

3 Q. Okay. Is that around when you were hired at Arbor?

4 A. I don't remember, but it --

5 Q. Approximately?

6 A. Approximately.

7 Q. Okay. And in the position, HHA is circled. Do you know
8 what HHA stands for?

9 A. No.

02:10 10 Q. You don't. What position did you think you were being
11 hired for at Arbor?

12 A. For a personal care assistant, PCA.

13 Q. All right. And then, this document below it, there's the
14 word "orientation" is circled, correct?

15 A. It's incorrect, because it says "HHA."

16 Q. Below that in the next line.

17 A. Orientation.

18 Q. It's circled, correct?

19 A. It is circled. It says "orientation."

02:10 20 Q. Okay. And then going down the left-hand side, there's a
21 column titled "Skills/Experience," correct?

22 A. Yes.

23 Q. All right. And it lists temperature: oral, rectal or
24 axillary; and then pulse: radial, and other topics underneath
25 there, correct?

1 A. Yes.

2 Q. All right. And then going over there, there is a column
3 "Observer's Initials," correct?

4 A. Yes.

5 Q. And then below there, about halfway down the table, there
6 are handwritten initials and a date. Can you read those
7 initials?

8 A. The initials?

9 Q. Yes. Are you able to read it?

02:11 10 A. Well, it is not my initials. So it look -- 3/3/14.

11 Q. If you can't read it, just let me know.

12 A. That's not me initialing either.

13 MR. LOONEY: Can we go to the next page.

14 BY MR. LOONEY:

15 Q. And this document continues, correct?

16 A. Yes.

17 Q. And then it --

18 MR. LOONEY: Can we go to the following page.

19 BY MR. LOONEY:

02:11 20 A. Yes.

21 Q. And it continues, and then there's a signature line at the
22 bottom?

23 A. Yes.

24 Q. Okay. Is that your signature on the employee's signature
25 line?

1 A. Employee's signature is signed, but it's not me signing.

2 Q. You did not sign this document?

3 A. No. That's not my signature.

4 Q. Okay. And whose name appears on "Preceptor Signature"?

5 A. Faith Newton.

6 Q. Okay. When you were at Arbor, did you have to fill out
7 time sheets for the time you spent with patients?

8 A. Yes.

9 MR. LOONEY: Okay. Can we show Exhibit 50.01, please.

02:12 10 Take it down for the jury, please. Sorry. Just for the --

11 BY MR. LOONEY:

12 Q. Do you see this document?

13 MR. LOONEY: Can you put up 50.01 for the witness.

14 All right.

15 BY MR. LOONEY:

16 Q. Do you recognize this document?

17 A. Yes, I do.

18 Q. And what is it?

19 A. It's a weekly visit time sheet from Arbor.

02:13 20 Q. Okay. And what were these weekly visit time sheets used
21 for?

22 A. This is supposed to be when you completed, you know, the
23 tasks with each client.

24 Q. Okay. Is this a form you filled out while at Arbor?

25 A. Never, not at Arbor, no.

1 Q. You didn't use this form at Arbor?

2 A. No.

3 MR. LOONEY: Okay. Can we take this down.

4 BY MR. LOONEY:

5 Q. More generally, were you required to fill out time sheets
6 at Arbor?

7 A. Yes.

8 Q. Okay. Did you receive instructions on how to do that?

9 A. No.

02:13 10 Q. Were you told how to record your time anyway?

11 A. I went to the office, and I pick up the time sheet that I
12 was supposed to, and I only recorded what I did.

13 Q. Okay. Were you ever told to record anything else?

14 MS. POSCUCCI: Objection, Your Honor.

15 Q. Yes or no?

16 MS. POSCUCCI: Hearsay.

17 MR. LOONEY: I'm asking for an instruction she was
18 given.

19 THE COURT: I don't know that it's hearsay on that.

02:14 20 That was just a yes-or-no question, right?

21 MR. LOONEY: Correct.

22 BY MR. LOONEY:

23 Q. You said that you went to the Arbor office to fill in time
24 sheets, correct?

25 A. No. To pick up the time sheet.

1 Q. Okay. And then what did you do with that time sheet?

2 A. I complete myself, and the client sign it and I sign it.

3 Q. Okay. Did you accurately record the time that you spent
4 with patients in those time sheets?

5 A. Not really. It was a lot of, you know, complaints about
6 it. You know, you have to complete it the way they wanted to,
7 but that was the issue.

8 Q. What was the way they wanted you to do?

9 A. They wanted to complete everything --

02:14 10 MS. POSCUCCI: Objection.

11 A. -- X, X, X, and everywhere.

12 THE COURT: Hold on a second. Basis?

13 MS. POSCUCCI: Hearsay, they wanted. And relevance,
14 we don't know who it is.

15 THE COURT: Can you lay a better foundation, please.

16 MR. LOONEY: Okay.

17 BY MR. LOONEY:

18 Q. You say you received instructions on how to fill out the
19 time sheet?

02:15 20 A. Never.

21 Q. You were told that you were -- what were you just saying
22 about how you were -- the method in which you were instructed
23 to fill out the time sheet?

24 A. For the time sheet --

25 MS. POSCUCCI: Same objection, Your Honor.

1 THE COURT: Stop. Overruled. Let him try and do it,
2 please.

3 BY MR. LOONEY:

4 Q. Did you talk to anyone at Arbor about how they wanted the
5 time sheets to be filled out?

6 A. I asked Rosa.

7 Q. Okay.

8 A. Yes.

9 Q. And do you know Rosa's full name?

02:15 10 A. Gonzalez.

11 Q. What did she instruct you or tell you about how the time
12 sheets should be filled out?

13 A. She told me that she has to complete everything, every box
14 that is supposed to be there on the time sheet.

15 Q. When you say every box, what do you mean by that?

16 A. By every duty that you're supposed to do, and I didn't
17 know I was supposed to do. I only marked what I did, and they
18 didn't like -- Rosa did not like that. She said that I was
19 supposed to mark down everything else.

02:16 20 Q. Okay. So you were supposed to -- the instruction was to
21 mark both things you had performed and tasks you had not
22 performed; is that accurate?

23 A. Correct.

24 MR. LOONEY: Nothing further.

25 THE COURT: Cross?

1 Why don't we take our break now. That's a good idea.

2 A little after 2:30.

3 THE CLERK: All rise for the jury.

4 (The jury is not present for the following.)

5 THE COURT: She's on cross-examination. Don't talk to
6 her with respect to cross on any conversations, all right?

7 MR. BRADY: Yes, Your Honor.

8 MR. LOONEY: Yes, Your Honor.

9 THE COURT: 2:35.

02:36 10 (Recess taken 2:16 p.m. - 2:36 p.m.)

11 COURTROOM CLERK: All rise for the jury.

12 (Jury enters the courtroom.)

13 COURTROOM CLERK: Court is back in session. Please be
14 seated.

15 THE COURT: When you're ready.

16 MS. PASCUCCI: Thank you, Your Honor.

17 CROSS-EXAMINATION BY MS. PASCUCCI:

18 Q. Good afternoon, Ms. O'Donoghue. My name is Michelle
19 Pascucci. I'm here with George Vien and we represent Faith
02:39 20 Newton.

21 A. Good afternoon.

22 Q. Now, Ms. O'Donoghue, you've met with the prosecutors in
23 this case, with federal agents, multiple times, correct?

24 A. Yes.

25 Q. How many times, would you say?

1 A. I don't remember. Three or four.

2 Q. Three or four. And when you met with the government, you
3 had a proffer agreement; is that correct?

4 A. Say that again.

5 Q. A proffer agreement?

6 A. What agreement? I don't have -- I don't understand. What
7 agreement?

8 Q. Perhaps I can help you.

9 MS. PASCUCCI: Your Honor, is it okay if I approach
02:39 10 the witness?

11 THE COURT: Sure.

12 Q. Ms. O'Donoghue, do you recognize that agreement?

13 A. Yes, I do.

14 Q. And that's an agreement that's between you and the
15 government in this case, right?

16 A. Yes.

17 Q. And it's signed by your attorney?

18 A. Yes.

19 Q. And it's also signed by attorneys for the government?

02:40 20 A. Correct.

21 Q. And pursuant to this agreement, no statements that you
22 made to the government could be used against you in a criminal
23 proceeding; is that right?

24 A. Ask that again, please.

25 Q. Sure. So if we go to page 1 and look at paragraph 1 here,

1 let me restate the first -- let me read it for you. "No
2 statements made or other information provided by Adriana
3 O'Donoghue," that's you, "will be used by the United States
4 Attorney directly against her" --

5 A. I --

6 Q. -- "evidence offered for or factual assertions made by or
7 on behalf of Adriana O'Donoghue at any stage of a civil or
8 criminal proceeding."

9 So in other words, am I saying it correctly, what you told
02:41 10 the government couldn't be used against you in a future
11 proceeding. Am I stating that correctly?

12 MR. LOONEY: Objection. There are some limited
13 exceptions.

14 A. No. Because I had an attorney at the time.

15 THE COURT: Hold on. You can come back on that, but
16 she asked if she read it correctly. That's a yes or no answer.
17 If you want to come back to it, you can. So the objection is
18 overruled. You can answer the question.

19 Q. So what was your understanding of what this agreement
02:41 20 provided you during your conversations with the government?

21 A. I didn't know. I did not know. So my attorney is the one
22 who explain to me, but I was totally confused. I don't know.

23 Q. But in any case, you recognize this agreement, correct?

24 A. I do recognize because my attorney read for me and said
25 it's okay, you can sign it.

1 MS. PASCUCCI: Your Honor, I would move to admit this
2 as Defense Exhibit 901.

3 MR. LOONEY: No objection.

4 THE COURT: It's admitted.

5 (Exhibit 901 admitted into evidence.)

6 MS. PASCUCCI: Thank you.

7 Q. Now, Ms. O'Donoghue, you've also testified before the
8 grand jury in this case, correct?

9 A. Yes.

02:42 10 Q. And when you testified before the grand jury, you were
11 placed under oath, right?

12 A. Yes.

13 Q. And you were explained that that's under the pains and
14 penalties of perjury, correct?

15 A. Yes.

16 Q. And when you were questioned in the grand jury, that was
17 with another prosecutor in this case, correct? It wasn't one
18 of the two gentlemen at that table.

19 A. Excuse me?

02:42 20 Q. When you were questioned before the grand jury, you
21 weren't questioned by one of the two gentlemen at that table;
22 is that right?

23 A. Yes, yes.

24 Q. And do you think that -- in March 2020, that's when that
25 testimony was?

1 A. With the other prosecutor?

2 Q. Yes.

3 A. I don't recall the dates.

4 Q. Okay. Now, you testified on direct about referral
5 payments that you received from Ms. Newton. And I believe you
6 said that Ms. Newton would pay you referral bonuses for
7 patients that you brought to Arbor; is that correct?

8 A. Correct.

9 Q. And you've also testified that you didn't know that was
02:43 10 illegal at the time, correct?

11 A. Correct.

12 Q. The practice was common at Arbor; is that right?

13 A. Correct.

14 Q. It wasn't a secret at the company?

15 A. Correct.

16 Q. And you worked at Lowell Elder Care before you worked at
17 Arbor, right?

18 A. Correct.

19 Q. And Lowell Elder Care also paid for referrals of new
02:44 20 clients, right, you testified?

21 A. Correct.

22 Q. Now, let's turn back to Arbor. And I think you talked
23 about on direct that Ms. Newton would give you checks, right?

24 A. She gave me cash and checks.

25 MS. PASCUCCI: Now, Ms. Apfel, would you mind pulling

1 up the check, I think it's Exhibit 536. And could you go to
2 the second check there.

3 Q. Now, you testified on direct that this check was signed by
4 Ben Muiruru, correct?

5 A. The signature is there, yes.

6 Q. And this check, if we look in the upper left-hand corner,
7 it's coming from an Arbor Home Care Services account, right?

8 A. Yes.

9 Q. And let's look at the lower left of that check.

02:44 10 MS. PASCUCCI: I don't know if you can zoom in, Ms.
11 Apfel.

12 Q. Does that say "referral" right on the check?

13 A. But it was for a referral.

14 Q. Yes. So the check was for a referral?

15 A. Correct.

16 Q. And it says "referral" right on the check?

17 A. If you really understood it, you know, whatever, it is
18 referral.

19 Q. And I believe you said that after a while Ms. Newton
02:45 20 stopped paying you?

21 A. Correct.

22 Q. And when she stopped paying you, you generally stopped
23 seeing her, right?

24 A. Correct.

25 Q. So would you say that your last payment from her was in

1 about 2014 when that check was dated?

2 A. When this, 3-27-2014?

3 Q. Yes.

4 A. No. There's another check.

5 MS. PASCUCCI: Can you go to the first page,

6 Ms. Apfel.

7 Q. May 2014, you don't really see much of her after May 2014?

8 A. No.

9 MS. PASCUCCI: You can take that down, Ms. Apfel.

02:46 10 Thank you very much.

11 Q. So most of your communications with Ms. Newton where
12 you're seeing her on a regular basis, that's 2014 and earlier,
13 correct?

14 A. 3-2014?

15 Q. Let me restate that. That was a bad question on my part.

16 You are seeing -- when you saw Ms. Newton, that was
17 primarily in 2014, correct?

18 A. I don't recall.

19 Q. Okay. But you don't remember seeing much of her after
02:46 20 2014, right?

21 A. Exactly, yes.

22 Q. And I believe you also testified you started working at
23 Arbor in 2014, correct?

24 A. Approximately, yes.

25 Q. And you testified that you were at Lowell Elder Care prior

1 to that?

2 A. Correct.

3 Q. And am I right that Lowell Elder Care provides adult day
4 care to the elderly?

5 A. Yes.

6 Q. And is it fair to say that individuals who need adult day
7 care tend to need supervision and care throughout the day?

8 A. That's correct.

9 Q. And is it fair to say that individuals who need
02:47 10 supervision and care throughout the day tend to have serious
11 medical issues?

12 A. Correct.

13 Q. And you referred those patients that were at Lowell Elder
14 Care to Arbor, correct?

15 A. Yes.

16 Q. And you also testified that you eventually became a
17 personal care attendant at Arbor, right?

18 A. Yes.

19 Q. You knew a nurse named Charles Githinji at Arbor. Am I
02:47 20 getting his name right?

21 A. Only Charles. I don't know his last name.

22 Q. Okay. There was a nurse named Charles?

23 A. Yes.

24 Q. And Charles, he was the nurse who conducted initial
25 assessments for patients you referred to Arbor?

1 A. Correct.

2 Q. And after you started working at Arbor, you would
3 accompany Charles when he would do these initial assessments
4 for patients you referred, right?

5 A. Once in a while.

6 Q. But it's fair to say that you accompanied him on patient
7 visits?

8 A. It was assessment for other clients.

9 Q. Okay. So you accompanied him on assessments for clients?

02:48 10 A. Assessment.

11 Q. And it wasn't your role to assess whether a patient was
12 eligible for services?

13 A. As a social worker, yes.

14 Q. But you were a -- you viewed yourself as a personal care
15 attendant at the time?

16 A. No, I was not a personal care attendant. I assisted to
17 help, translating Mrs. Charles -- Mr. Charles.

18 MS. PASCUCCI: Your Honor, may I approach the witness
19 again?

02:48 20 THE COURT: Sure, yes.

21 MS. PASCUCCI: I grabbed the wrong copy. My
22 apologies, Your Honor.

23 THE COURT: That's fine. No worries.

24 Q. Now, Ms. O'Donoghue, could you take a moment to just
25 review this document. Not every page because that would take

1 an extraordinarily long amount of time. But just take a quick
2 gander at it.

3 A. Sure.

4 Q. This is your testimony before the grand jury, correct?

5 A. Yes.

6 Q. And if we turn, I believe to page 62, lines 8 to 10.

7 A. 162?

8 Q. It's page 62, in the upper right-hand corner.

9 A. Okay. Hold on a minute.

02:50 10 Q. Lines 8 through 10, the prosecutor asked, "Were you
11 involved in assessing, you personally involved in assessing
12 whether a patient was eligible for services?" And you state,
13 "No."

14 A. Hold on a minute. I cannot see 62 because this is stuck
15 together. Okay.

16 Q. I'm going to blame the printers at my office,
17 Ms. O'Donoghue.

18 A. I'm sorry.

19 Q. No problem.

02:50 20 A. So do you want me to read this?

21 Q. So I'll restate for you, if we go to lines 8 -- maybe
22 start with line 3 where the prosecutor said, "I think you
23 testified earlier that you, when you would refer patients for
24 services at Arbor, you would wait to find out if the patient
25 was eligible or not for services." Is that right?

1 A. Yes.

2 Q. And you say "Correct."

3 A. Correct.

4 Q. "Were you involved in assessing, you personally involved
5 in assessing whether a patient was eligible."

6 A. Yes, in my office.

7 Q. And you said "No" at the time, that you were not involved.

8 A. I'm sorry.

9 Q. So is it true that you were involved in assessing whether
02:51 10 patients were eligible?

11 A. In my office, yes.

12 Q. But for Arbor Home Care, were you involved?

13 A. In my office for Arbor when we were referring, yes.

14 Q. Okay. But did you understand it was predominantly the
15 nurse's role to assess whether a patient was eligible?

16 A. It is.

17 Q. Okay. And it was the nurse's role to determine what was
18 medically necessary for patients?

19 A. Yes.

02:52 20 Q. When you were at Arbor, Arbor was a pretty large company,
21 right?

22 A. I don't know how large it was.

23 Q. How many nurses would you say there were?

24 A. I don't know anything about that.

25 Q. Okay. But is it fair to say there were some people who

1 worked in the office there?

2 A. No.

3 Q. Okay. So you did not work in the office?

4 A. No.

5 Q. So you were predominantly in the field; that's correct?

6 A. Correct.

7 Q. Thank you.

8 So Ms. O'Donoghue, you also testified regarding some
9 documents in your personnel file today, right?

02:52 10 A. In my files, they were personal.

11 Q. Yes. And you testified today that you weren't familiar
12 with some of those documents?

13 A. Correct.

14 Q. You testified that you had never seen those documents
15 before they were shown to you by prosecutors?

16 A. Correct, prior to, yes, the investigation.

17 Q. But Ms. O'Donoghue, isn't it true that you gave some of
18 those documents to prosecutors in this case?

19 A. In 2015, approximately, there was a package that they
02:53 20 wanted me to sign it again, and I never sign it for them.

21 Q. Perhaps you misunderstood my question. But when this case
22 was investigated and you went in to testify before the grand
23 jury --

24 A. Yes.

25 Q. -- before you went to testify, you produced some documents

1 to prosecutors, right? You produced some documents to federal
2 agents?

3 A. Correct.

4 Q. And some of the documents that we were discussing today
5 were the same documents that you produced to the government?

6 A. Well, yes, because they gave it to me, saying that I
7 needed to complete it, and I didn't complete it because, if I
8 did it once, I didn't have to do it a second time. So that is
9 the one that I submitted to USA.

02:54 10 Q. So it is correct that some of the documents you were asked
11 about that you said you hadn't seen before you had in fact
12 produced those to the government?

13 A. The whole package I did.

14 Q. Yes. And before that, those documents were stored at your
15 home?

16 A. Yes.

17 MS. PASCUCCI: Let's look, Ms. Apfel, could we pull up
18 363 and in particular the orientation for all employees -- the
19 orientation checklist.

02:54 20 MS. APFEL: Do you have a page number?

21 MS. PASCUCCI: It would be Bates 829, I think it says
22 23 at the bottom, Orientation For All Employees.

23 Q. Now, Ms. O'Donoghue, weren't you asked about this -- let's
24 back up. Today when you testified about this document, you
25 said you had never initialed this document, correct?

1 A. Correct.

2 Q. You said you had never seen the document before today?

3 A. Before today?

4 Q. Sorry, my bad. Before prosecutors showed it to you.

5 A. No, because I didn't sign that.

6 Q. But Ms. O'Donoghue, again, if we go to your grand jury
7 testimony, weren't you asked about this same document before
8 the grand jury?

9 A. I don't understand your question, ma'am.

02:56 10 Q. Here, let me help out. If we could just skip to page 34
11 of your grand jury testimony. I'm going to read you from the
12 record an exchange starting at line 8. The prosecutor says,
13 "And I'm going to show you what I've marked as grand jury
14 Exhibit 9."

15 A. Okay.

16 Q. "And do you see that this is a document titled Orientation
17 For All Employees? One column says Topics Covered and the
18 other says Date and Initials."

19 A. Page 34, I don't see that.

02:56 20 Q. Page 34, if we start at line 8.

21 A. Line 8, it says, "Oh, yes, I did, yes."

22 Q. Okay. If we look at "By Ms. Hemani" under that, starting
23 at line 8, "I'm going to show you what I've marked as grand
24 jury Exhibit 9. And do you see this is a document titled
25 Orientation For All Employees. One column says Topics Covered

1 and the other says Date and Initials. And the date here is
2 3-6-14. What does K stand for?" You respond, "K is my maiden
3 name."

4 She asks, "Your maiden name?" You respond, "My maiden
5 name."

6 And she says, "So these are your initials, right?" And
7 you respond, "Yes."

8 "And do you see that down here on the bottom it's also
9 dated March 6, 2014. Is that your signature there?"

02:57 10 A. Wrong.

11 Q. And you respond, "Yes."

12 A. Sorry. Wrong. This question is not the same question.
13 That is not my initials. My initials, my maiden name is KAM,
14 but I didn't say that I initial in that orientation, that's not
15 correct.

16 Q. Ms. O'Donoghue, when you testified under oath before the
17 grand jury, you said that these were your initials, correct?

18 A. My initials, I understood, as I said KAM, my initials, but
19 not that I have signed this form. So that is incorrect. I'm
02:58 20 correcting today.

21 Q. But didn't you testify, when she asked, is that your
22 signature there, did you not testify yes, it was?

23 A. I don't remember what I said or not. This is the correct
24 answer. This is the correct answer. It's not my initials and
25 not my signature.

1 Q. But again, Ms. O'Donoghue, you testified under oath that
2 it was, correct?

3 A. Again, I have my attorney. I don't know whether I
4 understood KAM as for my maiden name initials, but I don't ever
5 initial my maiden name ever.

6 Q. So let's turn ahead from this and let's turn to your work
7 at Arbor.

8 A. Mm-hmm.

9 Q. Ms. O'Donoghue, I want to ask you about some of the
02:58 10 patients that you saw at Arbor. One patient that you saw was
11 Wanda Villegas, correct?

12 A. Wanda Villegas.

13 Q. And Wanda, you referred her to Arbor, right?

14 A. Correct.

15 MS. PASCUCCI: Ms. Apfel, you can take that down.
16 Thank you for bringing it up.

17 Q. And Wanda, she had cognitive delays, correct?

18 A. Correct.

19 Q. She needed someone to help groom her?

02:59 20 A. Yes.

21 Q. And her nurse was Charles, right?

22 A. Charles, correct.

23 Q. And didn't Wanda's mom tell you that she was happy with
24 Charles' services?

25 A. Yes, she did.

1 Q. And another one of your patients that you referred that
2 was -- excuse me, if I say it wrong -- Theodora Rosas?

3 A. Correct.

4 Q. And you saw Ms. Rosas almost every day, right?

5 A. Yes.

6 Q. And after Arbor closed you continue to see her every day
7 as a personal care attendant, right?

8 A. No.

9 Q. You did not?

03:00 10 A. I stop for a while. No, not right away. Much later, yes.

11 Q. And Mr. Schenk, was he another patient of yours?

12 A. Correct.

13 Q. And you visited him every day?

14 A. Yes.

15 Q. And I believe on direct, Ms. O'Donoghue, you were asked if
16 you billed for hours that you didn't work, and you said that
17 you did, right?

18 A. Say your question.

19 Q. You were told that I think Ms. Gonzalez, Rosa Gonzalez
03:00 20 told you to bill for hours, to mark down visits that you did
21 not work; is that correct?

22 A. Not the way you are asking the question.

23 Q. Okay. Can you rephrase it for me? What was it that Rosa
24 told you to do?

25 A. Rosa will be concerned because I was not completing the

1 time sheet according to their expectation, and I said no,
2 that's not correct, this is not correct, this is not correct.
3 And so she said you have to -- you do it this way or you're not
4 going to get paid.

5 Q. Okay. And in response to that did you ever bill for hours
6 that didn't happen?

7 A. We have to bill it, otherwise, you know, they were not
8 going to pay.

9 Q. So you billed for hours that did not happen, correct?

03:01 10 A. That was, according to them, my break time or my
11 lunchtime.

12 Q. Okay. And Ms. O'Donoghue, I want to ask you, is it true
13 that you sued Arbor?

14 A. Yes, I did.

15 MS. PASCUCCI: And with the permission of the court,
16 Your Honor, may I approach the witness again?

17 THE COURT: Yes.

18 MS. PASCUCCI: Okay.

19 Q. Do you recognize this document?

03:02 20 A. Yes, I do.

21 Q. And what is this?

22 A. It is a Demand For Jury Trial against Arbor.

23 Q. And this is a suit that you filed against Arbor, correct?

24 A. Yes, I did.

25 Q. And you also sued Ben Muiruru?

1 A. Yes, I did.

2 MS. PASCUCCI: I would move to admit this document,
3 Your Honor.

4 MR. LOONEY: No objection.

5 THE COURT: It's admitted.

6 (Exhibit 902 admitted into evidence.)

7 THE COURT: Is that 902?

8 MS. PASCUCCI: 902. To turn on the Elmo, do I just --

9 COURTROOM CLERK: Just hit the power button. It might
03:03 10 take a second.

11 MS. PASCUCCI: Wow, this is a very fancy Elmo. My
12 apologies for my technological defunctness over here.

13 THE COURT: It's only lawyers who ever ask if they
14 turn it on by hitting the power button.

15 MS. PASCUCCI: Your Honor, it's not my fault that they
16 don't offer IT classes at law school.

17 THE COURT: You're not the first one; nor will you be
18 the last one.

19 Q. And in this suit you state that it was Ben Muiruru who
03:03 20 managed Arbor; is that correct?

21 A. Did I say? This is written by my attorney, I assume.

22 Q. Yes, but you would have --

23 A. He was representing me.

24 Q. But you would have authorized any complaint that your
25 attorney filed, correct? You would have needed to sign off on

1 it?

2 A. Yes, but I don't remember what it says there.

3 Q. And you can take a moment to review this, but am I correct
4 that Faith Newton isn't mentioned once in this complaint?

5 A. I don't know. I don't remember about Faith Newton.

6 Q. In this complaint you're alleging that Arbor did not pay
7 you enough for your work there, correct?

8 A. That's correct.

9 Q. And in conjunction with this complaint, you later filed an
03:04 10 affidavit; is that correct?

11 A. I don't remember. My attorney must have done it.

12 MS. PASCUCCI: I'm doing great over here with the
13 tech.

14 Q. Again, with the permission of the court, I'm going to hand
15 you this document. I'd ask you to skip ahead to what is
16 Exhibit 2 in this affidavit.

17 A. Exhibit 2?

18 Q. Yes. If you look, it's a Notice of Assessment of Damages
19 Hearing.

03:06 20 A. Yes.

21 Q. Is this an affidavit signed by you?

22 A. This is my signature.

23 Q. This is an affidavit that was submitted by your attorney
24 in that civil case?

25 A. Yes.

1 MS. PASCUCCI: Your Honor, I'd move to admit this
2 document.

3 MR. LOONEY: No objection.

4 THE COURT: It's admitted.

5 (Exhibit 903 admitted into evidence.)

6 THE COURT: Is that 903?

7 MS. PASCUCCI: Yes, Your Honor, 903.

8 Q. And if we go to paragraph 5, you wrote under oath, "I
9 worked 12 hours a day for seven days a week caring for several
03:06 10 different clients," correct?

11 A. Which one are you reading?

12 Q. If we look at paragraph 5 of that first page of the
13 affidavit, you worked 12 hours a day for seven days a week
14 caring for different patients.

15 A. Different -- yeah. In the beginning you say, correct.

16 Q. We're still looking at Exhibit 2. So it's under,
17 "Plaintiff Adriana O'Donoghue's affidavit is support of her
18 assessment for emotional damages." I think it's supposed to
19 say "in support."

03:07 20 A. Number 5, you want me to read it for that?

21 Q. That would be great.

22 A. "I usually work 12 hours a day for seven days a week.
23 Usually work, that's another word for several different
24 clients. Yes."

25 Q. And then if we go ahead to the next page, you write, "I

1 estimate I worked 84 hours a week, 12 hours a day for seven
2 days a week and was not paid for overtime after 40 hours." Is
3 that correct?

4 A. Where are you reading?

5 Q. This is 8C.

6 A. C?

7 Q. Yes.

8 A. I don't recall all these numbers, no.

9 Q. But in any case, you signed this document?

03:08 10 A. Yes, I did.

11 Q. And it was submitted in court?

12 A. I don't know. I was not in court.

13 Q. As a result -- did this case eventually settle,
14 Ms. O'Donoghue?

15 A. It was, but we never went to court.

16 Q. Sure. But the case settled, and after it was settled it
17 was dismissed?

18 A. They did, yes.

19 Q. And as a result of the settlement you were paid by Arbor,
03:08 20 correct?

21 A. Correct.

22 Q. And Ms. O'Donoghue, do you know who Joseph Muiruru is?

23 A. Joseph Muiruru?

24 Q. Yes.

25 A. At Arbor, at Arbor, I never met Joseph Muiruru, but in

1 2018 I met Joseph Muiruru.

2 Q. And do you recall that he was a director of nursing at
3 Arbor at one time?

4 A. No.

5 Q. And at some point did Mr. Muiruru tell you that he was
6 starting his own home health care agency?

7 A. Never spoke to Mr. Muiruru and I never knew his name at
8 Arbor.

9 Q. But after you worked at Arbor you said you did speak to
03:09 10 Mr. Muiruru, correct, in 2018?

11 A. 2018, correct.

12 Q. And in 2018, did he ask you to come work for him?

13 MR. LOONEY: Objection, relevance.

14 THE COURT: I don't know where she's going with it, so
15 I'll give her the question and then we'll see.

16 MS. PASCUCCI: Your Honor, I can skip this question.
17 Thank you.

18 THE COURT: Okay.

19 Q. Ms. O'Donoghue, do you believe that you are a
03:09 20 co-conspirator with Ms. Faith Newton in this case?

21 A. Excuse me? Say that again.

22 MR. LOONEY: Objection. This might be an opportunity
23 for a sidebar.

24 THE COURT: Okay.

25 **SIDEBAR:**

1 THE COURT: The question calls for a legal conclusion.
2 I'm happy to hear you on it. But depending on what comes out
3 of his mouth next, at the moment you can have something like
4 that, but without the term "co-conspirator" which is a legal
5 term.

6 MR. LOONEY: She is an unindicted co-conspirator in
7 Count Three, which is being dismissed. She's not a
8 co-conspirator in this case.

9 THE COURT: I mean, doesn't seem to me like you should
03:11 10 get into Count Three, which has been dismissed.

11 MS. PASCUCCI: Okay, got it.

12 THE COURT: If you want to ask if she colluded with
13 her in any way, I think "co-conspirator" is a legal term.

14 MS. PASCUCCI: Got it, okay.

15 (End of sidebar.)

16 Q. Did you ever enter into an agreement with Ms. Newton to
17 commit health care fraud?

18 A. Excuse me, say that again.

19 Q. Did you ever enter into an agreement with Faith Newton to
03:11 20 commit health care fraud?

21 A. Did I ever have an agreement with her to commit --

22 Q. Yes.

23 A. What is the question?

24 Q. Did you ever enter into at agreement --

25 A. No.

1 Q. -- with Ms. Newton to commit health care fraud?

2 A. No.

3 Q. And Ms. O'Donoghue, have you ever faced any criminal
4 charges for your work at Arbor?

5 A. No.

6 MS. PASCUCCI: No further questions, Your Honor.

7 THE COURT: Redirect.

8 MR. LOONEY: Briefly.

9 REDIRECT EXAMINATION BY MR. LOONEY:

03:12 10 MR. LOONEY: Ms. Apfel, could you pull back up Exhibit
11 363, page 27.

12 Q. Ms. O'Donoghue, do you see the document in front of you?

13 A. Yes.

14 Q. And you were asked some questions about your initials and
15 signature just now?

16 A. Can I ask you questions?

17 Q. You were asked questions about your initials on this
18 document and your signature on there, correct?

19 A. Yes, I did, yes, yes.

03:12 20 Q. I'm going to ask a question more generally. Did you ever
21 receive orientation on the subjects of this document from Faith
22 Newton?

23 A. No.

24 MR. LOONEY: Can we go to page 145 of this document.
25 Actually, this is the HHA skills checklist we looked at before.

1 Can we go to the third page of this one as well.

2 Q. Regardless of the signature issue, did you ever go on a
3 joint visit with Ms. Newton to a patient?

4 A. Never.

5 MR. LOONEY: Nothing further.

6 THE COURT: Recross?

7 MS. PASCUCCI: Nothing further, Your Honor.

8 THE COURT: You're excused. Thank you.

9 THE WITNESS: Do I leave these things here?

03:13 10 THE COURT: Yes, you can leave those there.

11 MR. BRADY: Your Honor, the United States calls
12 Airanisse Quintana.

13 Your Honor, may I approach the witness?

14 THE COURT: Yes. You all don't have to ask to
15 approach. Just make yourself at home.

16 MR. BRADY: Okay.

17 THE COURT: Okay.

18 AIRANISSE QUINTANA, Sworn

19 COURTROOM CLERK: Thank you. Can you please state
03:15 20 your name and spell your last name for the record.

21 THE WITNESS: Airanisse Quintana Rodriguez,
22 Q-u-i-n-t-a-n-a.

23 DIRECT EXAMINATION BY MR. BRADY:

24 Q. Good afternoon, Ms. Quintana.

25 A. Good afternoon.

1 Q. Can you hear me okay?

2 A. Yes.

3 Q. Okay. I just ask that, the microphone in front of you, it
4 moves forward, so if you can, speak into the mic. That will
5 make it easier for us to hear you. Okay?

6 A. Okay.

7 Q. Could I ask you to go ahead and just introduce yourself to
8 the jury, please.

9 A. Hi. My name is Airanisse Quintana.

03:15 10 Q. And Ms. Quintana, where do you live?

11 A. In Lawrence, Massachusetts.

12 Q. And what do you currently do for work?

13 A. Right now nothing.

14 Q. Nothing. Do you do any volunteer work these days?

15 A. Yes.

16 Q. Tell the jury about that.

17 A. So after my brain surgery, I am not able to work, so I am
18 doing volunteer from the church.

19 Q. And is that, you volunteer at like a church camp?

03:16 20 A. Yes, uh-huh.

21 Q. Did you used to work at a place called Arbor Home Care?

22 A. Yes.

23 Q. When did you work there?

24 A. I worked in 2013 until 2016 or 2012 to 2016.

25 Q. Okay. Did you have a couple of different jobs at Arbor?

1 A. Yes.

2 Q. Okay. What were the different jobs that you had there?

3 A. So I used to be like marketing, recruiting, community
4 license, covering for reception. I work, I do filing, I also
5 work in human resource, helping, in payroll. Sometimes I
6 help -- usually I translate for the nurse English to Spanish to
7 the patient and also with the home health aide.

8 Q. Ms. Quintana, before you came to Arbor, did you have a
9 different job in health care?

03:17 10 A. Yes.

11 Q. What was that job?

12 A. Compassionate Home Care.

13 Q. Compassionate Home Care?

14 A. Yes.

15 Q. And what was your job at Compassionate Home Care?

16 A. Home health aide.

17 Q. As a home health aide?

18 A. Yes.

19 Q. Do people sometimes refer to that as an HHA?

03:17 20 A. Uh-huh.

21 Q. And what kind of company was Compassionate?

22 A. What kind?

23 Q. What kind of a company? What did Compassionate do? What
24 kind of company was that?

25 A. Home care.

1 Q. Home care, okay. Can you describe for us what you did,
2 what your job was like as an HHA at Compassionate. What did
3 you do?

4 A. So I used to take care of patients like me now. Usually
5 all patient or patient that they cannot do -- they cannot do
6 things by their self.

7 Q. So you'd help patients with some of their daily
8 activities?

9 A. Yes.

03:18 10 Q. Okay. Ms. Quintana, do you know the defendant, Faith
11 Newton?

12 A. Yes.

13 Q. Do you recognize her here in the courtroom?

14 A. Yes.

15 Q. Sitting over at defense table?

16 A. Yes.

17 Q. Okay. How did you first meet Ms. Newton?

18 A. Because she used to be my grandma nurse.

19 Q. She used to be your grandmother's nurse?

03:19 20 A. Yes.

21 Q. Okay. And was that before you started working at Arbor?

22 A. Yes.

23 Q. Okay. Was that back when you were working at
24 Compassionate?

25 A. Yes.

1 Q. Okay. And did Ms. Newton also work at Compassionate?

2 A. Yes.

3 Q. Do you know what her job at Compassionate was?

4 A. Yes.

5 Q. What was Ms. Newton's job at Compassionate?

6 A. Nurse.

7 Q. She was a nurse?

8 A. Yes.

9 Q. And she was a nurse for your grandmother?

03:19 10 A. Yes.

11 Q. Okay. And do you remember when you first met Ms. Newton,
12 do you remember what that was about, what was going on with
13 your grandmother at that point?

14 A. She was visiting my grandma.

15 Q. Okay. Was she doing an intake for your grandmother?

16 A. Well, she visit my grandma from my mom's side. And then
17 she -- then I believe she was my other grandma nurse.

18 Q. So Ms. Newton ended up being a nurse for both of your
19 grandmothers on both sides?

03:20 20 A. Just the evaluation, the first evaluation, that's all.

21 Q. Just the evaluation, okay. Now, Ms. Quintana, at some
22 point do you know if Ms. Newton left Compassionate?

23 A. Yes.

24 Q. Did she say to you why she was leaving Compassionate?

25 A. She's going to open her own agency because there was

1 something, a situation in Compassionate she used to have active
2 there, like she used to be part of the boss, and then she want
3 to open her own agency and they let her. They just give her --
4 she opened her own agency.

5 Q. So Ms. Newton opened her own home health agency?

6 A. Yes.

7 Q. What was the name of that home health agency?

8 A. Arbor Home Care.

9 Q. That was Arbor. Okay. At some point, Ms. Quintana, did
03:21 10 Ms. Newton ask you to come work at Arbor?

11 A. Yes.

12 Q. What do you remember about that meeting that, that
13 conversation?

14 A. So we have a meeting in Dunkin' Donuts.

15 Q. Do you remember where that was, what town that was?

16 A. In Lowell, Massachusetts.

17 Q. And what do you remember happening at that meeting?

18 A. So she asked me if I can be part of her team and also if I
19 can -- well, in the beginning was no numbers. So she doesn't
03:21 20 have MassHealth number. And then she told me when she has
21 MassHealth number, then she's going to accept more clients.

22 Q. So let me follow up on that. Ms. Newton explained to you
23 or told you that when Arbor started up, they weren't yet a
24 provider for MassHealth?

25 A. Uh-huh.

1 Q. And did that have something to do with the number of
2 clients that they had as you understood it?

3 A. No. The number, like she cannot recruit a lot of patient
4 because she need to pay by her pocket the payroll.

5 Q. Got it. So they started but eventually they'd get a
6 number and they could go with MassHealth?

7 A. Yes.

8 Q. Okay. And did Ms. Newton ask you at that meeting if you
9 wanted to come work for her?

03:22 10 A. Huh?

11 Q. Did Ms. Newton ask you at that meeting if you would come
12 and work for her at Arbor?

13 A. Yes.

14 Q. And did she tell you what the job would be?

15 A. Well, she offered me to be recruiter or receptionist.

16 Q. Recruiter or receptionist?

17 A. Uh-huh.

18 Q. And what was that job, recruiter; what did that mean?

19 A. So just, the patient I was referred to Compassionate, let
03:23 20 them know that this agency is closer, and they are going to
21 have the same kind of service they used to have with the
22 previous agency, just with closer location because
23 Compassionate used to be in Worcester, and then most of the
24 patient, they live in Lowell, so Chelmsford is closer to the
25 patients, was more closer.

1 Q. Okay. So did you decide, did you accept, did you decide
2 to work at Arbor?

3 A. Yes.

4 Q. Why did you decide to work at Arbor?

5 A. First of all, it was more closer for me because to pick up
6 the paycheck, I need to drive to Worcester almost one hour
7 away, and then I would get paid more.

8 Q. So it was closer to home?

9 A. Uh-huh.

03:24 10 Q. And you'd also get paid more than you were making at
11 Compassionate?

12 A. Yes.

13 Q. Okay. How much more would you get paid at Arbor?

14 A. One dollar more.

15 Q. One dollar more per hour?

16 A. Yes.

17 Q. Okay. You mentioned that the job at Arbor involved
18 recruiting patients to Arbor?

19 A. Yes.

03:24 20 Q. Could you describe for us how that worked.

21 A. So every single patient I brought, they used to give \$100.

22 Q. Okay. Who gave \$100 to who?

23 A. So Faith used to give it to the person who used to
24 brought, so they used to give \$100 for patient.

25 Q. So was that called a referral bonus at Arbor?

1 A. Yes.

2 Q. Okay. And did you receive that \$100 for every new patient
3 you brought into Arbor?

4 A. Yes.

5 Q. So can you walk us through, can you explain to us the
6 process, as a patient recruiter, like, what did you do to go
7 find these patients?

8 A. So usually where my grandma live is a building for senior.
9 So they used to see the nurse coming to see my grandma, and
03:25 10 also there was a person helping my grandma doing the laundry,
11 taking care of my grandma, also cleaning, so all those stuff.
12 So they was asking to my grandma, and it was more easy for me
13 to let them know, oh, so if you want those services, you can
14 apply to this company, but your doctor need to sign the
15 approval first in order to come to join, to have that service.

16 Q. Okay. So let me come back to that \$100 referral bonus.
17 How was that money paid? How did you receive that money?

18 A. So I don't remember if it was cash or check.

19 Q. Do you remember at one point the referral bonus was paid
03:26 20 through the payroll as a bonus?

21 A. Yes.

22 Q. Do you remember how many referral bonuses, like how much
23 you received for referring patients?

24 A. For myself?

25 Q. Yeah, yourself?

1 A. Well, I think I receive 10,000.

2 Q. \$10,000?

3 A. Mm-hmm.

4 Q. So those referral bonuses, was that a common practice at
5 Arbor?

6 A. Huh?

7 Q. Was it a common practice at Arbor to pay those referral
8 bonuses?

9 A. Yes.

03:27 10 Q. Okay. Now, when you first started at Arbor, what was
11 Faith Newton's position there?

12 A. Nurse.

13 Q. Nurse. Was she still seeing patients outside the office
14 out in the field when you started?

15 A. Yes.

16 Q. And did you ever talk with Ms. Newton about how many
17 nursing visits she would order for the patients?

18 A. Can you repeat?

19 Q. Yeah, did you ever talk with Faith Newton about how many
03:27 20 nursing visits she would order for the patients?

21 A. That was after.

22 Q. Okay. After what?

23 A. After I start working in the office.

24 Q. Okay. What do you remember about that?

25 A. We have, there is PA, prior authorization system come up,

1 the hours the nurse was getting decreasing. And then we was
2 talking about how MassHealth is increasing the hours. And then
3 she explained to me what was important to have in the nurse
4 visit. Like, the agency get paid more if they have nurse than
5 they have home health aides.

6 Q. So Ms. Newton said to you that the agency Arbor gets paid
7 more if the patient has a nurse?

8 A. Yes.

9 Q. And that means that the patient would have nursing visits,
03:28 10 that the patient would have visits done by a nurse; is that
11 right?

12 A. Can you repeat?

13 Q. Let me ask you a different question. At some point after
14 you started at Arbor, did Ms. Newton start spending more time
15 in the office?

16 A. Yes.

17 Q. And at that point what was your understanding of
18 Ms. Newton's role at Arbor? What was she doing there?

19 A. Well, she is the head of the nurse.

03:29 20 Q. Was she also one of the owners?

21 A. Yes.

22 Q. Okay. Now, who was -- do you know who Ben Muiruru is?

23 A. Yes.

24 Q. Who was Ben Muiruru?

25 A. Her husband.

1 Q. Her husband. Now, what was his role at Arbor?

2 A. So he is also the owner.

3 Q. Okay. Did you interact with him, with Ben Muiruru?

4 A. Yes.

5 Q. Who did you deal with more, Faith or Ben?

6 A. With Faith.

7 Q. Now, at some point after you were doing the recruiting
8 role, did Ms. Newton ask you to take on a different position at
9 Arbor, a different job?

03:30 10 A. Yes.

11 Q. And when was that, best memory of when that was?

12 A. So in 2015, something happen with the person who used to
13 be like the office manager. He used to do the payroll, and
14 then she, 2015 or 2016, she asked me if I can do the payroll.

15 Q. So Faith Newton asked you if you could start doing the
16 payroll?

17 A. Yes.

18 Q. Okay. And describe for us what you did in that job?

19 A. Well, basically, it was a spreadsheet in Excel that have
03:31 20 all the employees' name there, and they also have a calculator.
21 Then depending how many hours the home health aide has, we need
22 to put in those hours, and the calculator is going to give us
23 how much you're supposed to -- the home health aide is supposed
24 to get paid by hours. And then after we finish, I need to send
25 an email to her, with her and the guy who work in Complete

1 Payroll Solution, and he submit the payroll.

2 Q. So Ms. Quintana, after you put together the payroll -- and
3 that was based on the number of hours for each nurse and each
4 home health aide?

5 A. Yes.

6 Q. Okay. You would then take that information, and you would
7 email it, share it with Faith Newton?

8 A. Yes, in the beginning, yes.

9 Q. In the beginning, okay. Then you would also, you
03:32 10 mentioned Complete Payroll Solutions, right?

11 A. Yes.

12 Q. Was that an outside company that Arbor worked with to help
13 with the payroll?

14 A. Yes.

15 Q. Okay. So you'd send it to them so they could process it?

16 A. Mm-hmm.

17 Q. Okay. Now, did someone teach you how to do that, how to
18 do the payroll?

19 A. So I get trained by Faith.

03:32 20 Q. And as part of that process, that payroll process, did you
21 use Axxess?

22 A. Yes, the company run by Axxess at that time.

23 Q. Okay. Was your position the head of payroll at Arbor? Is
24 that fair?

25 A. Yes.

1 Q. Okay. As the head of payroll, did you also handle
2 payments of those referral bonuses?

3 A. Yes.

4 Q. Okay. How did you know what to pay?

5 A. So when intake receive the call, the referral, so usually
6 the person who called, they let them know that, oh, I refer
7 this patient. And then we wait three months, in order, like,
8 when they used to have the doctor approval and the patient was
9 in the company for three months, then we made the bonus for the
03:33 10 patient for that person.

11 Q. So over time, am I right, did it change where somebody had
12 to be there for three months before the referral bonus would be
13 paid, a patient would have to be there?

14 A. Yeah, mm-hmm.

15 Q. And do you remember getting sticky notes with information
16 about what to pay for bonuses?

17 A. Yes, that information -- so the sticky note was together
18 with the patient folder.

19 Q. All right. So describe to us how that worked. You'd get
03:34 20 a patient folder. And what was the sticky note?

21 A. Okay. So when intake receives the information, intake put
22 in the name of the person who brought it on the sticky note.
23 And then sometime the sticky note was lost, so we end up
24 putting it on the first paper cover sheet, but then we take it
25 out because we are not supposed to have those there and then we

1 go back to the sticky note.

2 Q. Okay. Let me just try to break that down and follow up
3 real quick. So there was, first you'd get the information on
4 what bonus to pay on a sticky note?

5 A. Yes.

6 Q. Okay. And then was it you or other people who created a
7 document that was part of the patient file that indicated who
8 got paid the bonus?

9 A. Yes.

03:35 10 Q. Okay. Did you create that?

11 A. Rosa.

12 Q. Rosa Gonzalez did?

13 A. Mm-hmm.

14 Q. But you could see in the file that that sheet was there,
15 right?

16 A. Yes.

17 Q. And it would say the name of the person who referred and
18 got paid for that referral, right?

19 A. No, doesn't get paid until the folder goes to payroll.

03:35 20 Q. Got it. Okay. But it would have the information for who
21 should be paid, right?

22 A. Yes.

23 Q. Okay. And then at some point, that document, that cover
24 page was taken out of the patient files?

25 A. And we go back to the sticky note.

1 Q. Okay. Why did that happen?

2 A. We thought it was going to be more easy having in the
3 patient folder, but then we learned that we cannot pay for
4 referrals.

5 Q. Okay. Did Faith Newton say anything to you about that
6 document that was in the file?

7 A. Yes.

8 Q. What did Faith Newton say to you and tell you to do?

9 A. So she explained to us that in order -- so she explained
03:36 10 to us that we cannot have referral unless it's one person has a
11 community license. That is the only person that can refer a
12 patient to us. We cannot market patient outside.

13 Q. So did Faith Newton tell you to remove the document from
14 the patient files?

15 A. Yes, we go back to the sticky note, and that way the
16 company is not in trouble.

17 MR. BRADY: One moment, please.

18 Q. Ms. Quintana, at one point did you also help with the
19 medical records at Arbor?

03:37 20 A. Before payroll, yes.

21 Q. Okay. So before payroll you were asked to help with the
22 medical records; is that right?

23 A. Yes.

24 Q. And who asked you to do that?

25 A. Faith.

1 Q. Faith Newton?

2 A. Yes.

3 Q. And can you describe for us what you did with respect to
4 the medical records?

5 A. So in the beginning I was filing and then they hire Helen
6 Sech to do filing. And then I was doing like QA for the
7 folder. But this medical record review, that's the name of the
8 department they open. Because my English, in the beginning, I
9 was like scared to talk. I am a Spanish, so I was not -- I
03:38 10 want to work in the office, but I was scared to make mistake
11 with my pronunciation, or sometimes I forget some words or
12 don't say correctly. In that department I don't need to talk
13 with nobody. So she give me a piece of paper. That piece of
14 paper, I just need to make sure those paper, they are in the
15 folders.

16 Q. Okay. So Faith Newton gave you a piece of paper that
17 identified what should be in the folder?

18 A. Yes.

19 Q. And your job was to make sure that that was in the folder?

03:39 20 A. Yes.

21 Q. And as you did that, did you find that there were things
22 missing from the folders?

23 A. Yes.

24 Q. What sort of things were missing from the folder?

25 A. Usually the doctor's signature. In some of them the

1 doctor never signed. Some of them they put in, they deny the
2 case. Some doctor, they put a frown on the paper, and some
3 doctor we never heard back from them.

4 Q. Have you ever heard of something called a Plan of Care?

5 A. Yes.

6 Q. Okay. And was that the type of, sort of part of the
7 documents that you were looking for?

8 A. Yes, that one that was one of many.

9 Q. One of many, okay?

03:39 10 A. Uh-huh.

11 Q. And as you went through, as you did this review and you
12 went through the files and you found doctors' orders that
13 didn't have the signature on it, what did you do then, what did
14 you do with those?

15 A. So the instruction was if I saw three Plan of Care without
16 signature, I need to let her know and also call the doctor
17 office to let them know if they can sign. Or we need to
18 discontinue the service because that mean the doctor is
19 refusing to sign and the company doesn't get paid, and we need
03:40 20 to discontinue the service right away.

21 Q. And you said you would give it to her. Who is the her,
22 who would you give it to?

23 A. I let Faith know.

24 Q. And let me ask you, you were at Arbor for a couple of
25 years?

1 A. Yes.

2 Q. And at Arbor, over time did Arbor grow as a company?

3 A. Yes.

4 Q. All right. Got a lot more patients, right?

5 A. Yes.

6 Q. Got more nurses, right?

7 A. Yes.

8 Q. Got more HHAs?

9 A. Yes.

03:41 10 Q. And throughout that time, what was Faith Newton's role as
11 the company grew?

12 A. Can you repeat the question?

13 Q. Sure. What was Faith Newton's role at the company as the
14 company grew? What was her job there?

15 A. Well, she still a nurse but she doesn't have patients
16 where the companies are growing.

17 Q. Let me shift gears a bit and ask you about health aides,
18 HHAs.

19 A. Okay.

03:41 20 Q. And am I right that sometimes you would cover HHA visits
21 at Arbor?

22 A. Yes.

23 Q. Okay. Did you have any certifications or licenses?

24 A. In the beginning, no.

25 Q. Okay. Did you end up getting any certifications?

1 A. Yes.

2 Q. And was that in 2013?

3 A. Yeah, I believe so, '13 or '14.

4 Q. What certification did you get?

5 A. Nurse assistant.

6 Q. CNA?

7 A. CNA.

8 Q. Okay. And how did you get the CNA?

9 A. So I went to a school, Three Dimensions School in Dracut.

03:42 10 Q. Did you have to pay for that?

11 A. Yes. \$800.

12 Q. I'm sorry?

13 A. \$800.

14 Q. And how many hours did you have to spend to get that CNA?

15 A. So it was one month, I believe it was 75, 80 hours for the
16 whole entire month.

17 Q. Now, Ms. Quintana, at the beginning of your time at Arbor,
18 did some people start working as HHAs without any training?

19 A. Yes.

03:43 20 Q. Did some HHAs, new HHAs come in and sign papers and just
21 leave?

22 A. Yes.

23 Q. Now, at some point did you become responsible for training
24 the new HHAs at Arbor?

25 A. Well, not responsible but I was part of the training team.

1 Q. Okay. Explain that to the jury, how you became part of
2 that and what your role was with that.

3 A. So they open, they open a department called HHA department
4 to start to train the new home health aides, and that way they
5 have the knowledge to start working with the patient.

6 Q. And how long, how long was that training? Like, how long
7 did the training last for when that started?

8 A. Well, so should be four hours. In the beginning it was
9 the whole entire day, and then they finish in four hours.

03:44 10 Q. So it would wrap up, start in the morning and wrap up
11 around noon?

12 A. Yes.

13 Q. Okay. And for how long, for how long were you involved
14 with the training in that way?

15 A. Like almost two months.

16 Q. Almost two months?

17 A. Being in the training, yes. And then after that I just
18 introduce myself, let them know that I am in charge of payroll,
19 and also I speak Spanish if they need some translate.

03:45 20 Q. Did somebody else -- well, did somebody else take over the
21 HHA training?

22 A. Yes.

23 Q. Who was that?

24 A. Amanda Muchioki.

25 Q. And how did that happen? How did it go down that Amanda

1 Muchioki took over for you? What happened?

2 A. No, no. So when I have the -- when she asked me to work
3 in the office was as a medical record. That's the first time.
4 And then I went on vacation. When I came back, Amanda was
5 there already doing the HHA trainings, HHA department.

6 Q. Were the HHAs paid for the time that they spent in
7 training at Arbor?

8 A. No.

9 Q. Okay. Did you ever talk with Faith Newton about that?

03:46 10 A. Yes, because they was complaining that -- they was
11 complaining that -- because we thought there is going to be
12 like several day they need to come to the office to complete
13 the training, so they was asking if they are going to get paid.

14 Q. And what was the answer?

15 A. No, we don't pay for the training because if the
16 company -- so the training costs \$800, and then they are given
17 the training for free, if they go to the office, but they
18 supposed to be coming to different days, and they just show up
19 once.

03:46 20 Q. Okay. What else did Faith Newton say to you about how you
21 conducted -- how you handled the training for the HHAs?

22 A. So like I say in the beginning, it was a joke, but for me
23 it was a little bit joke that she was telling me that I take
24 too long on my training, doing my training. But for me, what I
25 understand when I take the CNA training is this is really

1 serious. We are working with patients that can injure -- we
2 can injure the patient and also injure ourselves. So that's why,
3 after that joke, I was not part of the team anymore. I just
4 introduce myself.

5 Q. I think you touched on it before, but let me ask you this.
6 Were you familiar with the state-required amount of training
7 for an HHA, how much the state required, how long that training
8 had to be? Were you familiar with that?

9 A. Yes.

03:48 10 Q. And did that include the requirement for a certain number
11 of hours of training?

12 A. Mm-hmm, yes.

13 Q. Do you remember how many hours?

14 A. I think it's 70, 75.

15 Q. 70, 75 hours, okay. And how did you learn that? How did
16 you learn that that was the requirement?

17 A. In the school.

18 Q. In the school to be a CNA?

19 A. Yes.

03:48 20 Q. Okay. As far as you are aware, did anybody, any HHA at
21 Arbor ever receive 75 hours of training?

22 MS. PASCUCCI: Objection as to basis for knowledge.

23 THE COURT: Well, he said as far as she is aware.

24 MS. PASCUCCI: Okay, thank you.

25 THE COURT: Limited to her knowledge.

1 Q. Do you understand that question, or should I ask it again?

2 A. Yes.

3 Q. Okay. Ms. Quintana, as far as you're aware, did any HHA
4 at Arbor receive the 75 hours of training?

5 A. No.

6 Q. Now, did you have other members of your family who worked
7 as HHAs for Arbor?

8 A. Yes.

9 Q. Okay. Tell us about that.

03:49 10 A. So they apply, they have the training. So if the doctor
11 sign -- well, so this is the way they used to be when I used to
12 be working with them. So we send a referral, we refer the
13 patient. If the doctor approve the patient, then we hire the
14 employee. If the doctor doesn't approve that patient, they
15 don't hire the employee because they don't want to have one
16 person, like one folder if that person is not going to be
17 working with a client.

18 So until the patient is on the system, then the family
19 member apply and get the training. So you go to orientation.
03:50 20 It's orientation. It's not a training. So they give
21 orientation, and then they start working the next day.

22 Q. Okay. So who are the members of your family who worked as
23 HHAs for Arbor?

24 A. So I have my mom, my dad, and also my --

25 Q. Did your brother work as an HHA, too?

1 A. Yes. And my -- I'm trying to say tia in English.

2 Q. Aunt, your aunt?

3 A. Aunt.

4 Q. So your mother, your father, your aunt and your brother
5 all worked as HHAs?

6 A. Yes.

7 Q. Do you know if any of them received the 75 hours of
8 training?

9 A. No.

03:51 10 MR. BRADY: Ms. Apfel, could we please pull up Exhibit
11 50.2 just for the court and the witness, please.

12 Q. Ms. Quintana, can you see on the screen in front of you
13 what we're calling Exhibit 50.2? Can you see that document?

14 A. Yes.

15 Q. Okay. And do you recognize that?

16 A. Yes.

17 Q. How do you recognize it? How do you know that?

18 A. That's part of the hiring paper.

19 Q. Okay. And what is this, what is this document, this one?

03:52 20 A. Well, it's a job summary.

21 Q. A job summary for what job?

22 A. Home health aide.

23 Q. From what company at what company?

24 A. Oh, Arbor.

25 MR. BRADY: Okay. I offer Exhibit 50.2.

1 MS. PASCUCCI: No objection, Your Honor.

2 THE COURT: It's admitted.

3 (Exhibit 50.2 admitted into evidence.)

4 Q. Okay. Do you know, Ms. Quintana, do you know who wrote
5 this, who created this?

6 A. Well, I work in Compassionate, so it's the same paper from
7 Compassionate at Arbor.

8 Q. So you used to work at Compassionate, which is the same
9 place where Ms. Faith Newton used to work?

03:52 10 A. Uh-huh.

11 Q. And you recognize this same job summary was the same thing
12 that they had at Compassionate?

13 A. Yes.

14 MR. BRADY: Okay. Now, Ms. Apfel, if we could maybe
15 blow up the part of this that says "Qualifications."

16 Q. Do you see it says, "preferred unless required by law."
17 Do you see that, Ms. Quintana?

18 A. Yes.

19 Q. Could I ask you to read the third bullet point here under
03:53 20 "Qualifications."

21 A. "Completion of a basic aide training program consistent
22 with the state and federal requirement and for which a
23 certificate was obtained."

24 MR. BRADY: Okay. We can zoom out of that. Can we
25 please show Exhibit 50.3. I think just for the witness.

1 Q. Ms. Quintana, can you see on the screen Exhibit 503?

2 A. Yes.

3 Q. And can we jump to the last page of 50.3. Do you see
4 that, too? Can you see that, Ms. Quintana?

5 A. Yes.

6 Q. What is this, what is this document, 50.3?

7 A. That's the answering of the 100 questions before.

8 Q. And so just to be clear, it's an HHA exam from Arbor and
9 the answer key?

03:54 10 A. Yes.

11 Q. Okay.

12 MR. BRADY: Your Honor, I offer Exhibit 50.3.

13 MS. PASCUCCI: Objection, foundation.

14 THE COURT: Yes, you need to offer a better foundation
15 on that.

16 MR. BRADY: Okay.

17 Q. How do you know, have you seen this document before?

18 A. Yes.

19 Q. Okay. Where have you seen it before?

03:54 20 A. In Compassionate.

21 Q. At Compassionate?

22 A. Yes.

23 Q. Did you also see it at Arbor?

24 A. Yes.

25 Q. And how did you come to see it at Arbor? Like, was it as

1 part of your job you'd see it?

2 A. So they -- when they give the exam, they attach the
3 answering key behind for the employee to do the check if they
4 have any wrong or not, and then they put in the score.

5 Q. Okay. So let me ask you a question about that. But
6 before I do that, Your Honor, I offer this again.

7 MS. PASCUCCI: No objection, Your Honor.

8 THE COURT: Admitted.

9 (Exhibit 50.3 admitted into evidence.)

03:55 10 Q. All right. So I think we're looking at, Ms. Quintana, do
11 you see that's the answer key on the screen, now that we can
12 all see that?

13 A. Yes.

14 Q. Okay. So explain to us how this exam and answer key were
15 used at Arbor.

16 A. So new employee cannot be under 80 percent because if they
17 have a lot of wrong answer, we are not supposed to hire them.
18 So that's why they have the answering key in order to do the
19 correction, make the modifications.

03:56 20 Q. To ensure that everybody got the passing score?

21 A. Yes.

22 Q. Okay. Were there HHAs who only spoke Spanish at Arbor?

23 A. No.

24 Q. Let me -- were there HHAs who didn't speak English at
25 Arbor?

1 A. Uh-huh.

2 Q. Were there some home health aides who did not speak
3 English?

4 A. Yes.

5 Q. There were some, okay. And those HHAs, some of them, they
6 only spoke Spanish; is that right?

7 A. Yes.

8 Q. Okay. Was the HHA exam, was that ever given in Spanish at
9 Arbor?

03:57 10 A. No.

11 MR. BRADY: We can take that down, Ms. Apfel. Now
12 could we pull up, I believe Exhibit 353 is in evidence. I
13 believe it's in evidence. Can we pull up Exhibit 353, please.

14 Q. Ms. Quintana, do you recognize this document, Exhibit 353?

15 A. Yes.

16 Q. What is it?

17 A. That's the certification Arbor provide after they take the
18 orientation training.

19 Q. Okay. And it says here that that individual successfully
03:58 20 completed the HHA required course of study approved by the
21 State of Massachusetts. Do you see that?

22 A. Yes.

23 Q. To your knowledge was that true?

24 A. Huh?

25 Q. Do you know if that -- did the State of Massachusetts

1 require the 75 hours of training?

2 A. Yes.

3 Q. Okay. And as far as you you're aware, the HHAs didn't get
4 that at Arbor, right?

5 A. No.

6 Q. So this statement, the required course of study approved
7 by the State of Massachusetts, is that true or false?

8 A. False.

9 Q. Okay. Do you remember a nurse named Regina who worked at
03:58 10 Arbor?

11 A. Yes.

12 Q. And what was her job there?

13 A. I think she was the nurse director.

14 Q. The nurse director?

15 A. Uh-huh, or QA nurse. One of those positions.

16 Q. One of those positions?

17 A. Mm-hmm.

18 Q. Did Regina stop working at Arbor at some point?

19 A. Yes.

03:58 20 Q. Do you know why she stopped working at Arbor?

21 A. What I heard was that she don't want to sign.

22 MS. PASCUCCI: Objection, Your Honor.

23 THE COURT: Sustained.

24 MR. BRADY: Okay. Your Honor, this may be a good
25 spot.

1 THE COURT: Okay. That's fine. We can recess for the
2 day. Okay. Keep an open mind. Don't talk to anybody about
3 the case. No extracurricular research on the case. And
4 tomorrow we'll go from 9:00 to 1:00, so we'll see you all here
5 at 9:00, okay?

6 COURTROOM CLERK: All rise for the jury.

7 (Jury exits the courtroom.)

8 THE COURT: Just a couple of quick things. Mr. Vien,
9 you had objections to --

04:00 10 MR. BRADY: May the witness step down first?

11 THE COURT: She can step down.

12 Mr. Vien, I think you had objections to eight of the
13 Arbor records -- the Axxess records.

14 MR. VIEN: May I submit something in writing so we can
15 all look at it and talk about the same thing?

16 THE COURT: Just a quick reminder, none of the
17 stipulations have been presented to the jury. So at some point
18 if you want to read them or you want me to read them, that's
19 fine. Just a reminder that they are there and they haven't
04:00 20 been presented yet.

21 MR. BRADY: Thank you, Your Honor. I think one of
22 them just refers to business records and the admissibility of
23 them. I think most of those we're going to present through
24 summary charts, so I'm not even sure -- if we're agreed on the
25 admissibility, I'm not sure we have to read it in to the jury.

1 THE COURT: Okay. If you want them read to the jury,
2 I'm just reminding you that they have not been. 9:00 tomorrow.
3 I should be on the bench, I can be here by 8:30, I think.

4 MS. PASCUCCI: Your Honor, I'd like to just raise one
5 additional issue.

6 THE COURT: Okay.

7 MS. PASCUCCI: We didn't object to the admission of
8 Adriana O'Donoghue's text messages on the basis of her being an
9 unindicted co-conspirator. After their admission we had a
04:01 10 sidebar where it was discussed the count where she was
11 unindicted co-conspirator was dismissed. So we would like to
12 retroactively raise an objection to the admission of those text
13 messages, to the extent they're being admitted, on the basis of
14 her being an unindicted co-conspirator of statements --

15 MR. BRADY: They're texts. I think they're
16 exclusively texts back and forth with the defendant, Faith
17 Newton, so there's an independent basis for them to come in
18 that way.

19 THE COURT: Well, someone take a look at them and tell
04:02 20 me, her statements come in -- the witness's come in for
21 context, and I think that the witness's responses were fairly
22 short, but if there are specific ones you have an objection to,
23 let me know.

24 MS. PASCUCCI: Understood. Thank you, Your Honor.

25 THE COURT: All right. See you guys tomorrow.

1 MR. BRADY: Thank you, Your Honor.

2 (Adjourned, 4:02 p.m.)

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5 CERTIFICATE OF OFFICIAL REPORTERS

6 Kelly Mortellite, RPR, RMR, CRR, and Linda Walsh,
7 RPR, CRR, in and for the United States District Court for the
8 District of Massachusetts, do hereby certify that the foregoing
9 transcript is a true and correct transcript of the
10 stenographically reported proceedings held in the
11 above-entitled matter to the best of our skill and ability.

12 Dated this 29th day of June, 2023.

13
14 /s/ Kelly Mortellite

15 _____

16
17 /s/ Linda Walsh

18 _____

10:33 20

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